

I N D E X

Michael J. Flynn V. Lafayette Ronald Hubbard a/k/a L. Ron Hubbard
Complaint

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U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MICHAEL J. FLYNN
Plaintiff

C.A. NO.

VS.

COMPLAINT

LAFAYETTE RONALD HUBBARD
a/k/a L. RON HUBBARD
Defendant,

PLAINTIFF DEMANDS
A TRIAL BY JURY

I. INTRODUCTION

80-2642-0

This suit seeks damages for acts perpetrated against plaintiff, an attorney, by defendant and various of his individual and organizational agents and employees pursuant to a written conspiracy to "destroy" the plaintiff. It arises out of plaintiff's representation of clients aggrieved by defendant and the Church of Scientology.

II. PARTIES

1. Plaintiff is Michael J. Flynn, an attorney admitted to practice in Massachusetts with offices at 12 Union Wharf, Boston, Massachusetts, and with a domicile in Boxford, Massachusetts.

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9-7-83

2. Defendant is Lafayette Ronald Hubbard a/k/a L. Ron Hubbard (hereafter "defendant" or "Hubbard") with last known residence and domicile in Hemet, California. Defendant has stated that he desires his present whereabouts to be unknown. They are unknown to plaintiff, but he can be notified through

- a) his attorney, Sherman Lenske of Lenske, Lenske, Heller & Magasin, Woodland West Building, Suite #315, 6400 Canoga Avenue, Woodland Hills, California;
- b) Lyman Spurlock, his literary and business agent through Author Services, Inc. with principal place of business at 6464 Sunset Boulevard, Los Angeles, California;
- c) David Miscavige, his trusted associate and good friend, through Author Services, Inc., and
- d) the Church of Scientology of California, Inc. with principal place of business at 5930 Franklin Avenue, Los Angeles, California.

III. JURISDICTION AND VENUE

3. Jurisdiction of this court exists pursuant to

- a. 28 U.S.C. Sec. 1332, diversity of citizenship, the matter in controversy exceeding \$10,000 exclusive of interest and costs and the parties being citizens of different states and
- b. 18 U.S.C. Secs. 1961-1968, the Racketeer Influenced and Corrupt Organizations Act ("RICO").

The claims as hereinafter set forth have arisen in Massachusetts.

- 4. At all times material hereto, Hubbard has done business on a daily basis in Massachusetts, Nevada, California and Florida through the "Guardian's Office", as described infra and also directly through various entities known as the Church of Scientology of California, Inc. ("CSC"), the Church of Scientology of Boston, Inc., ~~("CSB")~~, ~~Flag Services Organization, Inc.~~ ~~_____~~ ("FSO") Religious Technology Center ("RTC"), Church of Scientology International ~~("CSI")~~, Author Services, Inc. ("ASI"), as well as various other organizations (collectively "Scientology organizations") and individuals. He has done such business as follows:

a. Hubbard sells his publications, written, copyrighted and published by him, including, inter alia, "Dianetics - The Modern Science of Mental Health" and "Battlefield Earth" in each of the four (4) states set forth above and he directly receives income from the sale of said publications in said states.

b. Hubbard receives 10% of all gross income of the following Scientology organizations in the following states:

CSB - Massachusetts

CSC - Florida, California and Nevada

FSO - FLorida.

c. Hubbard personally owns and controls the copyrights of all books published and sold by him in the four (4) states. Said books and publications are in excess of fifty (50) and are sold on a daily basis by Hubbard in the four (4) states, from which sales Hubbard receives an annual gross income in excess of one million dollars per year.

- d. Hubbard has assigned to RTC all Scientology trademarks which are used to do business and produce income in excess of at least one million dollars per annum, in each of these four (4) states.
- e. Hubbard communicates via telex in each of these four (4) states, which network is used on a daily basis by the Guardian's office and by the "Hubbard Communications Office" to receive orders from Hubbard and to provide information to him.

IV. STATEMENT OF THE CLAIM

- A. Principal, Agency Relationship of Hubbard with various organizations and individuals
- 5. Defendant ~~is the founder,~~ controllor, principal and absolute authority over the Scientology organizations and individuals. The Scientology organizations, as well as various individuals, acting as agents of defendant within the scope of the authority granted to them by and upon his express orders, engaged in the conspiracy to perpetrate the torts alleged herein.

6. Hubbard ordered that the directors and officers of each of the Scientology organizations enumerated above sign written resignations in advance of their appointment as Directors and Officers and this was done. Hubbard held these "resignations" and over a period of years whenever any of said Directors or Officers contested his orders or authority, he removed them from their capacity in said corporations, and appointed new individuals who complied with his orders and policies.
7. Hubbard was a required signatory on every bank account over \$5,000 of each said Scientology corporation.
8. Hubbard established, supervised and controlled an organization called the "Guardian's Office" ("G.O."), which he placed in each of the Scientology corporations for purposes of enforcing his express daily orders. He ~~rouinely called these orders the "daily battle plan."~~

At all times material hereto, the G.O. employed individuals under Hubbard's direction to operate in California, Las Vegas, Nevada, Boston, Massachusetts, Clearwater, Florida, and diverse other places. Plaintiff has possession of the written policy of Hubbard establishing and directing the G.O., together

with the "training manuals" of the G.O., written by Hubbard, all of which were used to commit the torts alleged herein.

9. At all times material hereto, Hubbard has controlled said Scientology organizations and issued express daily orders to them through several individuals. These agents include his wife, Mary Sue Hubbard, Jane Kember (the head of the G.O.), Arthur Maren (an employee of the G.O.), David Miscavige (the current liaison of express orders between Hubbard and the G.O. and all Scientology organizations), Norman Starkey (an employee of the G.O.), Joseph Lisa (an employee of the G.O.), Jim Mulligan (an employee of the G.O.), and Lyman Spurlock (in charge of ASI and all financial affairs of Hubbard and the Scientology organizations). Plaintiff is in possession of a 286 page "Stipulation of Evidence" filed in United States v. Mary Sue Hubbard Crim. #78-401 (D.C.D.C. 1978), and executed by Mary Sue Hubbard and eight (8) of the highest officials of the G.O., all as agents of Hubbard, in which said individuals stipulate that Hubbard is the "overall supervisor" of the G.O., Said "Stipulation of Evidence" is a detailed stipulation of the "operation" of the G.O. to "destroy" some of the "enemies" of Hubbard, one of which was plaintiff.

10. At all times material hereto Hubbard used the Scientology organizations and the above named individuals and others to implement and enforce both his policies and his daily orders.

11. Some of these policies were written and copyrighted by Hubbard and his agents and used by his agents as overall policy directives to carry out his orders. Some of the written policies that were specifically implemented against the plaintiff as hereinafter described are set forth below:

a. "Enemy: Fair Game - May be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued, or lied to or destroyed."

(hereinafter "Fair Game Policy")

b. ~~"Don't ever defend."~~ Always attack. Find or manufacture enough threat against them to sue for peace. Originate a black PR campaign to destroy the person's reputation and to discredit them so thoroughly they will be ostracized."

c. "The purpose of the suit is to harass and discourage rather than to win.

"The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway, well knowing that he is not authorized, will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly."

d. "This is correct procedure:

1. Spot who is attacking us.
2. Start Investigating them promptly for FELONIES or worse using our own professionals, not outside agencies.
3. Double curve our reply by saying we welcome an investigation of them.
4. Start feeding lurid, blood, sex crime, actual evidence on the attackers to the press. Don't ever submit to an investigation of us. Make it rough, rough on attackers all the way."

e. "The following is a list of the successful . . . actions used by [our] intelligence [bureau]".

- Using . . . [sex] on someone high in the government to seduce them over to our side. . .

- Infiltrating an enemy group with an end to getting documents. . .

- Covert third partying with forged or phony signatures.
- Anonymous third partying. Particularly the Internal Revenue Service. . .
- Direct theft of documents. . .
- Impersonating a reporter over the phone to get information. . ."

f. "The following are possibilities for collecting data:

1. Infiltration
2. Bribery
3. Buying information
4. Robbery
5. Blackmail."

V. GENERAL STATEMENT OF CLAIM

12. Pursuant to Hubbard's aforestated policies and his specific orders he and his agents acted to implement and in fact did implement the conspiracy to commit the acts as set forth herein.

13. Pursuant to the Fair Game Policy, set forth in paragraph #11(a), on information and belief, Hubbard and his agents entered into a written conspiratorial scheme, code named "Operation Juggernaut." "Operation Juggernaut" was designed to "lie to, cheat, sue and destroy" the plaintiff by infiltrating plaintiff's law offices; stealing plaintiff's files, generally harassing plaintiff; "separating" plaintiff from his clients; defaming plaintiff; bringing eleven groundless legal actions against plaintiff and his colleagues and employees; bringing nine groundless bar complaints to get plaintiff disbarred; placing water in the fuel tanks of plaintiff's airplane to kill him; stealing plaintiff's telephone codes and charging calls to his code; attempting to "frame" plaintiff by stealing the telephone codes of a California company unknown to plaintiff then calling plaintiff's clients and charging it to the California company; harassing plaintiff's clients and stealing their files from plaintiff's office; calling in a bomb threat to plaintiff; threatening to poison plaintiff; kidnapping plaintiff's clients; issuing false and defamatory press releases and having them distributed on the streets of Boston, Massachusetts, Clearwater, Florida, and Los Angeles, California; writing false and defamatory articles and distributing them at plaintiff's law school; providing

false financial information to the IRS to initiate an investigation; stealing plaintiff's telephone toll call records from the telephone company; conducting illegal tape-recording of plaintiff's calls; illegally obtaining plaintiff's bank account information; trespassing onto plaintiff's private property; interfering with plaintiff's relationships with his clients; placing dirt in plaintiff's automobile fuel tank; engaging in a wholesale pattern of abusive and harassive conduct.

Details of these activities are set forth below.

14. In July, 1979, plaintiff in his capacity as an attorney, undertook the representation of one La Venda Van Schaick for the purpose of obtaining a refund of monies paid by her to CSC in the amount of approximately \$12,800.

Plaintiff sent a letter to CSC for the purpose of obtaining said funds in order to avoid the necessity of instituting a lawsuit. CSC refused to pay a refund.

15. Within several days after sending the aforementioned letter, Hubbard, who was then residing in Hemet, California, ordered an immediate infiltration of plaintiff's law office by a G.O. agent named Chuck Malone who sought employment from plaintiff posing as a Private Investigator. Malone's purpose was to steal records and information from plaintiff's offices.

16. During the period between July to September, 1979, when the correspondence concerning the Van Schaick refund was being exchanged, the plaintiff began to receive phone calls from clients, relatives and friends stating that they had received strange telephone calls from various individuals discrediting plaintiff and requesting information about plaintiff. One of the plaintiff's clients, Phyliss T. Sequeira, told plaintiff that she had received a call requesting her to report plaintiff to the bar because he had not turned over all of the funds he had received in the trial of a case. In fact, the client was present at the trial, received a trial judgment upon a jury verdict and was paid in full. Plaintiff is informed that the foregoing activities were conducted by Joseph Lisa, Gary Lawrence, James Mulligan, Kevin Tighe, Kathy Brown, Warren Friske and others all acting as agents of the G.O. under the authority and direction of Hubbard.

After receiving a letter denying the request for a refund, plaintiff received a letter dated September 11, 1979 from CSB. The September 11th letter stated that the Church would be willing to pay approximately 50% of the funds paid by Van Schaick and at the same time suggested that Van Schaick should not use the Church for

the balance of the funds because she had an extensive drug history, had "three abortions", had "attempted suicide", had severe mental problems, and had signed an agreement never to sue the Church of Scientology or the Hubbards.

17. Shortly after the receipt of the foregoing letter, plaintiff received several anonymous telephone calls suggesting that representation of Van Schaick was a "dangerous matter," that no one "messes with the Church," that if the undersigned had any doubts about this issue, to contact other people who had sought to "interfere" with Scientology. These calls were made by individuals acting on orders from Hubbard.
18. During this time plaintiff observed individuals following him, defamatory calls were made to various clients of plaintiff shortly after he had called said clients on the phone, and personnel at the small airport where plaintiff maintained his airplane, observed unidentified individuals viewing the plane and seeking information about it. The individuals performing these acts were acting on orders from Hubbard.

19. On or about October 19, 1979, plaintiff was flying said airplane to South Bend, Indiana, when the engine began to malfunction at approximately 8,000 feet in altitude, lost power entirely for a period of time, and plaintiff was forced to land at an airport in proximity to where the malfunction occurred. The plaintiff subsequently discovered that large amounts of water were present in his fuel tank, although prior to take-off the undersigned had engaged in a pre-flight examination of said fuel tanks, and no water was present. The presence of the water caused the malfunction of the engine and the cessation of power. Plaintiff believes that water balloons were placed in the tanks of the airplane by Joseph Lisa and James Mulligan, agents of the G.O., on orders of Hubbard.

20. For the period October, 1979 and the ensuing several months, plaintiff's client, Van Schaick, has claimed ~~XXXX~~ numerous incidents of personal harassment, including the surveillance of her home and her child, being run off the road in her car, numerous telephone calls to her neighbors, suggesting that she was an unfit mother, calls to her employer resulting in a loss of her job as a waitress and attempts to separate her from her husband. In November, 1979, Hubbard sent Gary Klingler,

a G.O. agent from Los Angeles, to convince Van Schaick that the "harassive things" being done to her were done by plaintiff.

21. In November, 1979, nine (9) of the highest officials in the G.O. were convicted of a variety of crimes, and approximately 30,000 documents seized by the F.B.I from ~~CSC~~ were released to the general public. ~~These~~ documents, in part, demonstrate that Hubbard, the G.O., the Scientology organizations and the above named individuals were responsible for the inexplicable and harassive incidents that had occurred in the prior several months.

22. On December 14, 1979, after approximately six (6) months of research and investigation at a cost in the excess of \$20,000 to the plaintiff, plaintiff brought a lawsuit against CSC on behalf of La Venda Van Schaick.

23. On or about December 27, 1979, two weeks after the commencement of the Van Schaick action, Hubbard, through the G.O., sent an individual named Bill Broderick, to pose as a prospective client in order to gain information about plaintiff's office and his files on Scientology.

At the same time defendant, intensified his harassment of individuals associated with plaintiff and attempted to disrupt non-Scientology cases the plaintiff was involved in and generally initiated a campaign of unrelenting personal and legal harassment, as is described in the remaining paragraphs herein.'

24. On January 3, 1980, approximately three weeks after the commencement of the Van Schaick case, without filing a counterclaim in said action, and without filing a Motion to Dismiss within the time allowed by the rules, the G.O. under the direct orders of Hubbard, through attorney Steven Burris, filed Church of Scientology of Nevada, Inc. v. Thomas Hoffman and others, Civil # KV-80-10-HEL (Nevada Fed. District Court, January 3, 1980). Plaintiffs were the said Van Schaick, Kevin Flynn, brother and employee of plaintiff, Thomas G. Hoffman, Esquire, a colleague of plaintiff working with plaintiff in the same suite of offices and Edward Walters, a client of plaintiff. That suit alleged a conspiracy by said individuals to deprive Scientology of its First Amendment rights. The suit was dismissed by the Federal Court within 120 days.

25. At the same time as the filing of said action, Hubbard, through the G.O., filed in succession, four (4) separate Bar complaints against plaintiff alleging, inter alia, conspiracy to violate Scientology's First Amendment rights and the unlicensed practice of law by Kevin Flynn. The first three complaints were filed on January 15, 1980, February 7, 1980 and April 3, 1980, all of which were dismissed on April 10, 1980 by the Massachusetts Board of Bar Overseers. On November 19, 1980, the G.O. filed yet another complaint which was dismissed on May 4, 1980. The purpose of filing said Bar complaints was to harass plaintiff, and remove him from his "position of power" as a lawyer. They were filed without probable cause.

26. On or about May, 1980, after the dismissal of Hoffman, supra in Nevada Federal District Court, Hubbard through the G.O., and attorney Burris, acting as an agent of the G.O., then commenced an action against ~~the said Van~~ Schaick, Kevin Flynn, Edward Walters, and other clients of the plaintiff in the state court in Nevada, which was nearly identical to the federal action. As to Van Schaick and Kevin Flynn, this suit was also dismissed. Said suit was brought on the basis of a false affidavit procured by the G.O. on behalf of Hubbard.

27. Defendant through his agents in March, 1980, filed Church of Scientology of Boston, Inc. v. Michael Flynn et al., Civil #40906 in the Massachusetts Suffolk Superior Court. The defendants were the plaintiff herein and four of his clients. The complaint alleged that the clients had stolen materials from CSB and turned them over to plaintiff. Said suit has been used to mislead various courts into the belief that plaintiff stipulated to the placement of the files in court.
28. In, September, 1980, Hubbard, through the G.O., filed a suit against the plaintiff, Church of Scientology of Nevada, Inc. v. Michael Flynn Civil # 202573 (Nevada Circuit Court), alleging essentially that the plaintiff was engaged in a conspiracy against Scientology and abusing the judicial process. Scientology counsel attempted to procure a false affidavit from a G.O. agent support the case. The Nevada state court granted ~~plaintiff's Motion for Summary Judgment in that action.~~ The suit was brought for purposes of harassment. It was the fourth (4th) suit brought against plaintiff or his office and the third (3rd) suit dismissed as of November, 1980.

29. Between January and May, 1980, plaintiff was subjected to hundreds of instances of personal harassment, which plaintiff is informed, based upon affidavits of Warren Friske, Carol Garrity, Gerald Armstrong, and other informants, to have been conducted by the G.O. under the direct authority and control of Hubbard. These included, inter alia, contacting the plaintiff's insurance agent, Philip Chesley, and informing the agent that plaintiff had murdered the husband of one of his clients; making a bomb threat to the plaintiff's building, resulting in its evacuation; throwing rocks at his building; sending a post card threatening to poison the plaintiff; harassive phone calls at all hours of the day and night at plaintiff's home; making obscene telephone calls to neighbors and suggesting in said calls that plaintiff was making them; having process servers arriving at plaintiff's home at all hours terrifying plaintiff's wife and children, and placing dirt in the fuel tank ~~of~~ plaintiff's car.

30. Between approximately August , 1979 and up to and including at least September, 1981, the G.O., pursuant to policies and orders of Hubbard, and acting as his agent stole documents directly from the plaintiff's office files and from a trash dumpster in plaintiff's private office condominium compound. Some of the G.O. agents involved in the theft and use of said stolen

materials were Kevin Tighe, Chuck Malone, Gary Lawrence, James Mulligan, Joseph Lisa, Sylvana Garritano, Warren Friske, David Aden, Robert Johnson and others.

31. These documents number at least 20,000 and include but are not limited to the following:

a. Attorney/Client communication:

1. typed and handwritten drafts of letters to and from clients;
2. telephone message slips containing names, addresses and telephone numbers of clients;
3. affidavits and statements from clients;
4. draft court pleadings such as interrogatories, etc., sent to and received from client; and
5. personal financial information of clients.

b. Work Product:

- ~~1.~~ notes, memoranda, and internal office product;
2. draft court pleadings;
3. draft proposals, etc.; and
4. memoranda re: contracts with other counsel, investigative and government agencies;

c. Miscellaneous:

1. contracts;
2. invoices, bills, checks, etc.;
3. correspondence and memoranda;
4. personal financial information; and
5. typewriter ribbons.

32. Hubbard and the G.O., as his agents, used the stolen documents and information to separate plaintiff from his clients, disrupt plaintiff's law practice, destroy plaintiff's reputation and business, interfere with plaintiff's causes and, generally perpetrate all the tortious schemes set forth herein. A few examples are as follows:

- a. Contacting opposing parties, opposing counsel, and the insurers of opposing parties in the cases of Leff v. NEMCO, Ham v. Bard Parker, Marides v. Anthony's Pier Four, French v. Fidelity Union Life Insurance Co., and many others cases in which plaintiff represented parties, for the purpose of preventing case settlements, blocking production of evidence, revealing plaintiff's strategy and evidentiary posture, and generally interfering with his ability to represent his client.

- b. Contacting Scientology-related clients of plaintiff for the purpose of intimidating and threatening them and preventing them from retaining plaintiff.
- c. Calling plaintiff's clients while posing as "reporters", "insurance investigators", "authors", etc. to intimidate or threaten or annoy the client, or to seek to have the client fire the plaintiff by informing the client of confidential details from his file, or that plaintiff was about to be "disbarred", was under investigation by the Bar, had cheated them out of money, was being investigated by the I.R.S., and was engaged in unethical practices, etc. For example, one client, Andrea Wagner, was dying of mesothelioma and required rest without disturbances. Hubbard's agents stole her telephone number and correspondence from plaintiff's files and, knowing these facts, proceeded to make regular nuisance calls to her, linking them to plaintiff. Another client, Michael Smith, received a telephone call from an agent of defendant. The agent told Smith details of the terms of a contingent fee agreement between Smith and plaintiff, stolen from plaintiff's files. This was done to and in fact did cause Smith to question the integrity and

confidentiality of his dealing with plaintiff.

This occurred on literally hundreds of occasions during the 4 years material to this Complaint.

- d. Providing plaintiff's financial information, falsified, to the I.R.S. in order to instigate an investigation.
- e. Preparing daily reports from the documents and information stolen from plaintiffs and providing such information and reports together with directions and instructions to Harvey Silverglate an attorney representing the Church of Scientology of California, Inc. in Van Schaick and other attorneys, for the specific purpose of interfering with plaintiff's cases and clients.
- f. Intimidating and harassing parties and witnesses in the following actions brought by plaintiff on ~~behalf~~ behalf of the named plaintiffs therein.

1. Paulette Cooper v. Church of Scientology of California, Inc., Civ. No. 81-681- MC (D. Mass, 1981);
2. Tonja Burden v. Church of Scientology of California, Inc., U.S. Dist. Ct. Civ. No. 80-401 Civ. Tk. (M.D.Fla., 1980);

3. La Venda Van Schaick v. Church of Scientology of California, Inc., Civ. No. 79-2491-G (D. Mass., 1979);
4. Church of Scientology of Boston, Inc., et al v. Michael J. Flynn, et al., Civ. No. 40906 (Suf. Sup. Ct., Mass., 1980);
5. Janet Troy v. Church of Scientology of Boston, et al., Civ. No. 41073 (Suf. Sup. Ct., Mass., 1980);
6. Kim L. Vashel v. Church of Scientology of Boston, et al., Civ. No. 47237 (Suf. Sup. Ct., Mass., 1981);
7. Mark D. Barron v. Church of Scientology of Boston, Inc., Civ. No. 51110 (Suf. Sup. Ct., Mass., 1981);
8. Jose Baptista v. Church of Scientology Mission of Cambridge, Inc., Civ. No. 81-1194 (Mid. Sup. Ct., Mass., 1981);
9. Marjorie J. Hansen v. Church of Scientology of Boston, et al., Civ. No. 41074 (Suf. Sup. Ct., Mass., 1980);
10. Lawrence Stifler v. Church of Scientology of Boston, et al., Civ. No. 44706 (Suf. Sup. Ct., Mass., 1980);
11. Michael W. Smith v. Church of Scientology of Boston, Inc., et al, Civ. No. 47236 (Suf. Sup. Ct., Mass., 1981).

33. On or about April 25, 1980, together with co-counsel, plaintiff filed suit on behalf of an ex-Scientologist, Tonja Burden, in the case Burden v. Church of Scientology of California, Inc., Civ. #80-401 Civ. Tk, U.S. Dist. Ct. (M.D. Fla.), seeking damages for fraud, kidnapping, and other actions. In response defendant, through his agents, proceeded to literally swamp the court docket in bad faith with Motions, pleadings and discovery, the great bulk of which motions have been denied, resulting in a massive amount of paper work that stands approximately two (2) feet high to date.
34. Between May, 1980 and December, 1980, it is estimated that Hubbard, through the G.O., attempted to take depositions of plaintiff, his employees and colleagues on at least thirty (30) separate occasions and have actually taken plaintiff's deposition on six (6) separate occasions to date. These depositions were noticed and conducted to harass plaintiff inhibit his ability to practice law unlawfully discourage him from suing Scientology and abuse the judicial system.
35. In January, 1981, after living through a year and a half of the harassment and conduct previously described, plaintiff went to Los Angeles, California, together with his colleagues, for the purpose of discussing settlement

of the litigation with Jay Roth, an attorney hired by Hubbard through the G.O. At the time of the preparation for said settlement negotiations, plaintiff's office prepared an extensive analysis of approximately 50 cases that it was considering filing on behalf of former members, which analysis related to the costs of such litigation, for both sides, the factual issues involved in the various cases and peripheral issues such as probate matters and media problems. That analysis was prepared specifically for said settlement negotiations. Plaintiff's agents stole this analysis from plaintiff's offices and used it to file an additional Bar complaint and two (2) suits against plaintiff in the Los Angeles Federal District Court. These suits, discussed infra, were also dismissed.

36. After settlement negotiations failed, the plaintiff and his colleagues, after spending several weeks in Los Angeles, returned to Boston and prepared to conduct a conference in May, 1981 for the purpose of meeting with several lawyers in connection with the proposed ~~commencement~~ of some of the fifty (50) cases included in the settlement analysis. Portions of the settlement analysis were included in a packet of information given to the lawyers who attended the May conference. Those documents were also subsequently stolen by Hubbard, through the G.O., from plaintiff's office.

37. At the conference, attended by approximately eight (8) attorneys, the nature of Scientology litigation was explained, fee relationships were discussed involving the traditional contingent fee and sharing of the fees between attorneys based upon the amount of work done on each case. Other peripheral issues set forth above in the settlement analysis were discussed. This meeting was infiltrated by Hubbard, through an employee of the G.O., Ford Schwartz, posing as a client. The G.O., therefore, was aware of the nature of the meeting, the matters discussed, and the fee relationships that existed between the clients and attorneys.

38. Between May, 1981 and July, 1981, Kevin Flynn, who had ceased being an employee of the plaintiff in mid 1980 and who had commenced working as an independent contractor, submitted a proposal to plaintiff and his colleagues whereby Kevin Flynn's corporation, Flynn Associates Management Corporation, ~~would perform~~ services on behalf of the various attorneys as a researcher and investigator in consideration of receiving a percentage of the funds recovered in the cases. After research by the plaintiff and his colleagues, said proposal was rejected although ethical opinions of several states indicated that such a proposal was not improper. Said proposal was stolen

from the offices of the plaintiff and/or the trash dumpster in plaintiff's private office compound and used as the basis of a 5th complaint against plaintiff filed with the Massachusetts Board of Bar Overseers. See paragraph # 45, infra.

39. During the summer of 1981, as a result of the on-going theft of documents from the plaintiff's office and compound, much of which constituted attorney-client communication and/or work product, Hubbard and the G.O. knew that plaintiff and counsel from various other states were considering the commencement of various actions in New York, Washington, and Los Angeles. It also knew that Flynn Associates Management Corporation played no role in connection with said suits, that the May meeting among counsel was ethically proper, and that the plaintiff was still seeking to resolve the cases without litigation.

40. Between April and June, 1981, the City of Clearwater, Florida, hired plaintiff to prepare a report relative to the Church of Scientology and the tax exempt reports of organizations such as the Church of Scientology. Defendant knew of this through the documents stolen from plaintiff's trash or offices.

41. With the knowledge as above described in paragraphs #38 and #39, in June, 1981, Jay Roth, an attorney hired by Hubbard through the G.O. again initiated settlement discussions and offered plaintiff \$1.6 million dollars to resolve all existing and impending litigation, which plaintiff accepted on behalf of the various clients involved in a good faith effort to resolve the entire matter. The plaintiff's motivation in accepting said settlement offer involved numerous considerations including a) the desire of clients and counsel to end the torrent of legal and personal harassment, b) the expense and time consumption inherent in the litigation for all parties, c) the promised efforts of the G.O. to reform and discontinue many of its unlawful practices, and d) the financial remuneration of clients and counsel. At this point in connection with the litigation, plaintiff had personally expended in excess of \$200,000.
42. Immediately after plaintiff's acceptance of the said offer, however, Hubbard and the G.O. conducted a national media campaign accusing the plaintiff of crimes and intentionally defaming plaintiff through the distribution of press releases. These press releases falsely accused the plaintiff of "extortion" in connection with the second set of settlement conferences

that plaintiff and the Church of Scientology had undertaken, of illegally selling shares in Flynn Associates Management Corporation, and a variety of other false and libelous statements designed to injure the plaintiff's reputation in Clearwater.

43. In the summer of 1981, when all of the aforesaid matters were occurring, Hubbard replaced some of his agents in the G.O. with several young members of the "Commodore's Messenger Org" who had served personally for Hubbard throughout their teenage years who were then approximately 21 or 22 years of age, and were said to be fanatical adherents to Hubbard, including David Miscavige. Hubbard placed said individuals in command of the G.O. because he believed that plaintiff had not been harassed intensely enough and Hubbard intended to increase the level of "attack" and harassment of plaintiff. Said individuals, on orders of Hubbard, adopted a plan in the summer of 1981, to broaden "Operation Juggernaut" and to conduct an all-out campaign against the plaintiff pursuant to the Fair Game Doctrine, to destroy the plaintiff and all opposition to Hubbard.

The foregoing involved a highly secretive written plan adopted by Hubbard, Miscavige, Starkey, and others to attack the plaintiff on all "fronts". Pursuant to said plan, Miscavige and Starkey, as agents of Hubbard, convened a meeting of lawyers in Atlanta, Georgia, for the purpose of initiating Bar complaints, lawsuits, depositions, motions for disqualification, contempt motions in order to harass plaintiff by use of the judicial system. The meeting took place in July, 1981, and it was attended by Attorneys Harvey Silverglate, Jay Roth, Steven Burris, Donald Randolph, Sherman Lenske, Dan Warren and others. Hubbard's plan also ordered an increase in the "black PR" campaign to destroy plaintiff's reputation, plans to "frame" plaintiff with the commission of crimes and the continued infiltration and theft of client materials and an all out effort to destroy plaintiff's law practice and career.

44. Pursuant to said plan, the Scientology organization then embarked on a campaign beginning in August, 1981 and continuing up to the present date to "attack", "sue", and "destroy" the plaintiff. This campaign has included the remaining events described herein.

45. In August, 1981, the Scientology organization, through its counsel, Harvey Silverglate, filed yet another Bar complaint, the 5th against the plaintiff and his colleagues attaching many of the documents that had been stolen from the plaintiff's office and compound. The thrust of this complaint was that the plaintiff was unlawfully selling shares of Flynn Associates Management Corporation to finance prospective lawsuits against Scientology. Although the G.O. and Hubbard knew that this allegation was false, the G.O. wove together the settlement analysis prepared in January, 1981, the materials assembled for the May conference, and the proposal of Kevin Flynn, then attempted to create a false and deceptive impression with the Board of Bar Overseers and subsequently in the courts. Hubbard and the G.O. knew at the time of said Bar complaint that the allegations of its counsel, Harvey Silverglate, were false because it had agents who had attended the May conference, it had stolen the settlement analysis at the time it was prepared in January 1981, and it had stolen the Kevin Flynn proposal when it had been prepared and rejected in June, 1981.

46. In addition to the aforesaid Bar complaint, the G.O. and its counsel then proceeded to file an additional three (3) Bar complaints against plaintiff and his colleagues,

including, inter alia, the allegation that the plaintiff improperly attempted to avoid service of process by one of the many process servers in connection with suits and depositions that the G.O. was attempting to initiate against plaintiff's office. These Bar complaints were filed throughout the period from August to December, 1981.

47. In August, 1981, the G.O. commenced an action in the Los Angeles Federal District Court through one of its members, Steven Miller, against the plaintiff, his brother Kevin Flynn, John Clark, M.D., and several others on the theory that the plaintiff had forcibly, "deprogrammed" Miller and violated his civil rights. See Steven Miller v. Michael Flynn et al., Civ. #81-4275 (C.D. Calif., 1981). At the time of the filing of the suit, the plaintiff had never even heard of Steven Miller and had never had any contact with him ~~before.~~

48. In August, 1981, defendant Hubbard commenced an action in the Boston Federal District Court through members of the G.O., Ellen and Chris Garrison, on the same theory of "deprogramming". This suit was brought against Kevin Flynn and Paulette Cooper, a client of plaintiff, after

specific planning and meetings held by the G.O. See Garrison v. Flynn et al., Civil #81-2608T (D. Mass., 1981).

49. During the same period of time, and in the ensuing months, Hubbard, through members of the G.O., filed motions to disqualify the plaintiff in the cases of Garrity, et al. v. The Church of Scientology, Los Angeles Federal District Court, Burden v. Church of Scientology, Federal District Court in Tampa, and in the Boston Van Schaick case. These motions for disqualification were all part of the plan to personally and legally harass the plaintiff.
50. Between August, 1981, and December, 1981 Hubbard, through the G.O., literally swamped the court dockets in every case that it was involved in including both those cases it had initiated and those that had been brought by claimants, with hundreds of pleadings, motions, discovery requests, etc.
51. The purposes of all the aforesaid suits bar complaints and pleadings was to harass and economically destroy plaintiff, his reputation, and his law practice.

52. The office of the plaintiff utilized a long distance telephone code which the G.O. intercepted. Thereafter, the G.O. charged in excess of \$1,000 in telephone calls to said code. In a similar "operation", the G.O. intercepted the code of a California Corporation and made telephone calls to plaintiff's clients charging the calls to the California Corporation's codes, thereby attempting to "frame" the plaintiff.
53. On or about the Spring of 1982, after the plaintiff and his office spent in excess of one hundred (100) hours defending the Motions to Disqualify filed in the foresaid Garrity, Van Schaick and Burden cases, the G.O. withdrew said Motions and undertook a new round of lawsuits against his office. Hubbard and the G.O. commenced an abuse of process action in the Los Angeles Federal District Court in connection with the Garrity, et al case and also brought another civil rights action against the plaintiff and the City of Clearwater in the Tampa Federal District Court. See Church of Scientology of California Inc., v. Flynn et al., Civ.# CV-83-896-CBM (C.D. Calif., 1983) and Flag Service Org., Inc. v. Flynn et al., Civ. #82-440-Civ.-T-WC (Tampa Federal District Court, 1982) After the Los Angeles Federal District Court dismissed the abuse of process action, the G.O.

filed a second suit on the same ground. Both suits have been dismissed. Both suits were filed with the malicious motive as described in #48.

54. Hubbard and the G.O. timed the commencement of the abuse of process action in the Los Angeles Federal District Court to coincide with certain hearings being conducted by the City of ~~Clearwater~~ involving Hubbard and the Church of Scientology in which hearings plaintiff's office was involved. In connection with the aforesaid hearings, the Scientology organization adopted a specific operation to harass the plaintiff as follows:

(a) Hubbard and the G.O. issued a press release in the national media accusing plaintiff of "extortion," handed out press releases in the City of Clearwater prior to the hearings, and conducted press conferences in which G.O. agents and their attorney, John Peterson, accused the plaintiff of extortion and abuse of process. In making such allegations, the G.O. and Peterson revealed information relative to the June, 1981 settlement discussions which the G.O. had insisted and promised would remain confidential.

(b) In the second week in March, 1982, the Clearwater hearings were scheduled to begin on April 21, 1982. On March 25th, counsel for the G.O. in the case of Cazares v. Church of Scientology of California, Inc., Civil #81-3472-CA-01 (Volusia County Circuit Ct., Fla., 1981), Circuit Court in Daytona, Florida, sent a letter to the plaintiff scheduling his deposition for April 23, 1982, in Tampa during the middle of the hearings. Although the hearings were subsequently continued until May 5, 1982, while appearing in the Burden case in Tampa, the plaintiff was served with a deposition subpoena. Plaintiff filed a Verified Motion to Quash the Subpoena stating that the demands of his law practice prevented him from remaining in Florida throughout the "time" required for the deposition, to wit, "2:00 P.M. on Friday, April 23, to continue from day to day" over the week-end and the following Monday, as required by the deposition subpoena. The plaintiff sent a letter on two (2) occasions to the G.O. counsel indicating that he could not appear for the deposition, that he had no personal knowledge of the subject matter of the case in which the deposition was to be taken, but that he would be willing to schedule another date.

Subsequently, after the G.O. learned that the hearings would be continued to May 5, 1982, it issued a second subpoena, from the Los Angeles Federal Court in the case of Church of Scientology v. F.B.I. scheduling plaintiff's deposition on May 10, 1982 in Boston. This was intentionally scheduled again the middle of the hearings to harass plaintiff. The plaintiff had no personal knowledge of said case but Hubbard, through the G.O., sought to ~~abuse the~~ legal process by use of the scheduled depositions. The plaintiff again communicated to counsel in that case that he would be unable to appear on said date. Subsequently, during the middle of the Clearwater hearings, Hubbard, through the G.O., filed motions to hold the plaintiff in contempt in the Los Angeles Federal District Court and in the Daytona Circuit Court because of failure of the plaintiff to appear at the depositions. In connection with the Daytona contempt proceeding, plaintiff, under Florida law, was immune from service of process in Florida, and plaintiff's deposition had to be taken in Massachusetts. Notwithstanding the foregoing, Attorney ~~Warren~~ Dan Warren, acting as an agent of Hubbard, through the G.O., specifically lied to the Court to procure a contempt order. Without a trial, without any witnesses being called at the contempt matter, and without

complying with Florida rules governing "indirect criminal contempts", Hubbard, through Warren, procured a contempt finding against plaintiff from the Court. The contempt matter was reported throughout the United States based on the press releases issued by Hubbard and the G.O. stating that plaintiff was held in criminal contempt. The contempt conviction was subsequently vacated and ~~dismissed~~ after appeal.

55. Between December 13, 1979 and the present date, pursuant to a written conspiratorial plan to intentionally destroy the plaintiff's reputation, Hubbard, through the G.O., and through several attorneys retained by the G.O., has systematically libeled and slandered the plaintiff on hundreds of occasions. Pursuant to Hubbard's policy to "manufacture" libelous evidence, to "originate a black PR campaign", and to use "covert third-partying", against his enemies", Hubbard's agents have, inter alia, defamed the plaintiff in the following manner:

(a) On December 13, 1979, Hubbard's agents issued a "press release" in Boston stating that plaintiff was an "agent of the F.B.I." and "working" for an agency called "cointelpro",

and plaintiff was an "ambulancae chaser preying on religious dropouts", "unethical" and giving a "bad name to the legal profession".

- (b) In April 1981, the G.O. as Hubbard's agent, wrote and published an article in which the libelous statements set forth below appear. This article was distributed throughout the United States, including the mailing of said article to Professors at Suffolk Law School where plaintiff enjoyed an excellent reputation, having graduated first in his class, Summa Cum Laude, and having served as Editor-In-Chief of the Suffolk University Law Review. The article was intended to injure plaintiff's reputation. Among the libelous statements are:

- I. Plaintiff is a "pariah amongst some Boston jurists";
- II. Plaintiff's "professional conduct" is being "criticized" by peers and causing "complaint to the Massachusetts Bar Association";

- III. Plaintiff has practiced in the field of medical malpractice "in pursuit of the ambulance";
- IV. Plaintiff was caught in a "backlash" when suits against Boston doctors caused the medical profession to "fight malpractice attorneys who were driving up insurance premiums";
- V. Plaintiff was similar to the attorneys who lost work because of "no fault insurance" in the field of automobile litigation, and "Boston responded with a similar program to sidetrack the 'ambulance chasers'";
- VI. Malpractice awards generated by plaintiff caused the creation of a tribunal system which caused plaintiff's practice to "suffer," the dismissal of "case after case," immense profits lost, which "ended upon a divorce case with only \$8000 at issue" where plaintiff had to "shuffle mortgages to maintain his affluent Boston life-style";
- VII. By innuendo, plaintiff was a cause of "runaway inflation of insurance premiums";

- VIII. "While the nature and value of his cases changed drastically, Flynn's abrasive conduct did not.";
- XI. "Flynn tries to prejudice the judge by mostly contrived assertions.";
- X. Plaintiff pursued "clerical malpractice to compensate for lost income from medical malpractice";
- XI. "Flynn saw the new market and, like a riverboat gambler whose ship had sunk, he went ashore to ply his trade.";
- XII. "The suit sufferd, he said, from Flynn's mistaken belief that he knew what he was doing.";
- XIII. "Meanwhile, less excessive attorneys have drawn Flynn's wrath. When one lawyer representing the Church of Scientology took a legitimate deposition of one of Flynn's clients, Flynn tried to get the attorney fired from his part-time position at a university. The attempt failed, leaving bitter feelings amongst Boston jurists. It caused one Boston barrister to remark, "We aren't going to get down in the gutter with him."

XIV. "Flynn's behavior was the subject of a complaint filed with the General Counsel of the Massachusetts Bar Association. According to the inch-thick Complaint filed by the Church, Flynn and his associates had harassed Church members, deceived the Court, filed suits merely for publicity, and ~~obstructed~~ fact finding processes during litigation;

XV. "At the same time, a Boston Court granted a church request that documents stolen from the Church be returned by Flynn. Some of the material was retained by the Court as part of the litigation brought against Flynn. The Church even had to go to Las Vegas to seek judicial relief when it was found Flynn was improperly soliciting funds and clients to beef up his publicity campaign."

(c) In July - September 1981, Hubbard through the G.O. issued a series of press releases and distributed flyers on the streets of Clearwater, Florida including, inter alia, many of the libelous statements made in subparagraph (b) hereof:

- I. Plaintiff was involved in "illegal" financial dealings with the City of Clearwater.
- II. Plaintiff's reputation as a lawyer was in "pursuit of the ambulance."
- III. Plaintiff, by inference and innuendo, was responsible for the bad reputation given to the area of medical malpractice.
- IV. Plaintiff lost "case after case."

(d) On or about April or May 1982, Hubbard, through G.O. attorney John Peterson, issued a press release accusing plaintiff of the crime of extortion. Articles appeared in newspapers throughout the U.S., including the Clearwater Sun, and the St. Petersburg Times. At the time, plaintiff was serving as special counsel to the City of Clearwater, and he enjoyed an excellent reputation in the Clearwater community. The press releases and articles were timed to coincide with hearings in Clearwater and were timed to coincide with the 53 million dollar abuse of process and "extortion" suit

frivolously brought by the G.O. in the Los Angeles Federal District Court. Said suit, its amended versions, and a similar second suit were all dismissed.

(e) In August 1982, the G.O., acting under Hubbard's authority, disseminated press releases stating that plaintiff had been convicted of criminal contempt. Said criminal contempt was procured by Dan Warren, as an agent of the G.O., based on false statements which Warren knew were false at the time the statements were made.

(f) In November, 1982, after the Los Angeles Federal District Court had dismissed the abuse of process action which had been brought the previous April, Hubbard, through G.O. attorneys Donald Randolph and Jay Roth brought an amended version of said suit. Again, G.O. attorney John Peterson issued a press release disseminated nationwide accusing plaintiff of the crime of extortion. Later, in February, 1983, when yet another version of the same suit was brought, another press release was issued,

accusing plaintiff of extortion. The lawsuits and the press releases were all predicated upon a settlement conference which defendant, through the G.O. and its attorneys, had insisted be confidential. All of the suits have been dismissed.

- (g) In November, 1982, Attorney Harvey Silverglate appeared, as an agent of Hubbard, on the metropolitan Boston Television program "More." On that program, Silverglate by inference and innuendo, accused the plaintiff of lying about whether water in the fuel tanks of plaintiff's airplane had ever caused a loss of power. Silverglate stated that he had requested information from the plaintiff about the incident and that Silverglate had never received any such information. Silverglate further stated that the incident with the water in the fuel tank "never took place." Both of the statements of Silverglate were false and were designed to injure and damage plaintiff's reputation.

(h) In an interview with Boston Globe Reporter Ben Bradlee, Attorney Silverglate acting as an agent of the G.O. on Hubbard's behalf, falsely stated that the reason many of the 20,000 documents stolen from the plaintiff's office appeared to be photocopies of originals from files was due to the fact that they were typed transcriptions of typewriter ribbons taken from the "trash." This statement was false when made and, by inference and innuendo, it accused plaintiff of lying about the fact that documents came directly from his office files.

(i) On June 1 and 2, 1983, David Aden, Heber Jentz and other G.O. agents, all acting in the capacity as G.O. agents, under the direct authority of Hubbard made the following libelous and slanderous statements in the Boston Globe and on various radio talk shows:

I. "Flynn is a man who's given new definition to the word shyster. The man is unconscionable. We don't pay extortionists".

- II. Plaintiff had sent an "extortion letter" to the Church of Scientology.
- III. Plaintiff was an "ambulance chaser".
- IV. Plaintiff was a "criminal", and a "shyster", and an "extortionist".

56. Throughout the 4-year reign of terror perpetrated by Hubbard individually and through the G.O. as hereinbefore described, plaintiff has sought to obtain legal redress for his clients while suffering from continued severe emotional and mental distress. The tortious conduct of Hubbard has interfered with the plaintiff's representation of his clients and the prosecution of their cases. As a result of said tortious conduct, plaintiff has expended in excess of \$300,000 in connection with all of the litigation relating to the Church of Scientology. Plaintiff has suffered irrevocable damage to his reputation and to his career as an attorney.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION - CONSPIRACY

57. Plaintiff restates and realleges paragraphs #1 through 56 of this Complaint.

58. Hubbard and his agents, including but not limited to the "Scientology" organizations set forth in paragraph #4, and individual agents such as Mary Sue Hubbard, David Miscavige, Joseph Lisa, Arthur Maren, James Mulligan, Kevin Tighe, and others, together with attorneys retained by Hubbard's agents including but not limited to Harvey Silverglate, Jay Roth, Steven Burris, Donald Randolph, Sanford Katz, Dan Warren, John Peterson and others, combined together to accomplish the unlawful purposes set forth herein, and used the unlawful means set forth herein. Hubbard's creation of the G.O. with its tortious policies, some of which are set forth in paragraph #11, together with the nationwide communications network which operated on a daily basis at all times material to this Complaint in order to accomplish Hubbard's unlawful purposes, gave Hubbard a peculiar power of coercion over the plaintiff, which a single person and in a similar relationship would not have had. The following overt acts were committed by Hubbard and his agents pursuant to the conspiratorial scheme, code named "Operation Juggernaut". These overt acts constitute unlawful purposes and unlawful means:

- (a) Infiltration of plaintiff's office by Ford Schwartz, Silvana Garritano, Bill Broderick and others for the purpose of stealing documents and

information, which documents and information were actually stolen by them, while posing as clients and employees of plaintiff.

- (b) Trespassing onto private property as above described for the purpose of stealing plaintiff's trash. G.O. agents, acting pursuant to Hubbard's policies and orders devised elaborate schemes to trespass onto the property at 12 Union Wharf during the early morning hours and carried electronic beepers for the purpose of avoiding detection.
- (c) Using highly confidential attorney-client communications and work-product stolen from plaintiff's trash and burglarized from his office, and stolen directly from his clients for the purposes as set forth supra.
- (d) Adopting a written plan to sue the plaintiff and his colleagues, clients and employees in jurisdictions throughout the U.S. for the sole purpose of harassing the plaintiff. These lawsuits were knowingly groundless when filed and include the following:

- I. Church of Scientology of Boston, Inc. v. Michael Flynn, Civil No. 40906. (Suffolk Sup. Ct. Mass., 1980)
- II. Church of Scientology of Nevada Inc., v. Thomas Hoffman, Kevin Flynn, et al, Civil No. LV-80-10-HEC (D. Nevada, 1980).
- III. Church of Scientology of Nevada Inc., v. Kevin Flynn and La Venda Van Schaick, Civil No. 196880, Nevada Circuit Court .
- IV. Church of Scientology of Nevada Inc., v. Michael Flynn, Civil No. 202573, Nevada Circuit Court .
- V. Steven Miller v. Michael Flynn, et al, Civil No. 81-4275 (C.D. Calif. 1981).
- VI. Cazares v. Church of Scientology, Civil No. 81-3472-CA-01, Volusia County Circuit Court,.
- VII. Garrison v. Kevin Flynn, et al, Civil No. 81-2608-T (D. Mass, 1981).
- VIII. Church of Scientology of California, Inc. v. Michael Flynn, Thomas Hoffman and Thomas Greene, Civil No. CV-83-896-CBM (C.D. Calif., 1983).
- IX. Church of Scientology v. Michael Flynn, Thomas Hoffman, Thomas Greene and Kevin Flynn, CV-81-3259-CBM; CV-81-3260-CBM (C.D. Calif., 1983);

- X. Flag Service Org. Inc. v. Michael Flynn and the City of Clearwater, Civil No. 82-440-CIV-T-WC (Tampa, Fla., 1982).
- XI. Church of Scientology of California, Inc. v. Michael Flynn, #83-2386-S (D. Mass. 1983).
- XII. Church of Scientology of California, Inc. v. Michael Flynn, #CV-835202-R (C.D. Calif., 1983).

- (e) Adopting a written plan to "get Michael Flynn disbarred" and then filing nine (9) separate, groundless, frivolous Complaints with the Board of Bar Overseers.
- (f) Threatening to poison plaintiff by sending him a postcard stating that Hubbard's agents were "inside" his operation and that he should have his food tested.
- (g) Placing water in the fuel tanks of plaintiff's airplane on or about October 19, 1979, nearly resulting in a fatal crash with 4 occupants in the airplane at the time, including plaintiff's son.
- (h) Calling plaintiff's home at all hours of the night to disturb plaintiff while he was sleeping.
- (i) Making obscene telephone calls to plaintiff's neighbors, suggesting that it was plaintiff.

- (j) Adopting a written plan to knowingly libel and slander the plaintiff in order to destroy his reputation.
- (k) Adopting a written plan to knowingly and intentionally inflict emotional distress on the plaintiff by conducting all of the activities set forth in this Complaint.
- (l) Attempting to "frame" plaintiff of the crime of interstate theft of telephone codes.
- (m) Stealing plaintiff's telephone codes and charging calls to his code.
- (n) Threatening plaintiff's life on the telephone.
- (o) Sending a bomb threat to plaintiff's building.
- (p) Putting dirt in the fuel tank of plaintiff's car.

57. As a result of the foregoing conspiracy, plaintiff has been damaged in the amount of Ten Million Dollars.

WHEREFORE, plaintiff demands damages from defendant in the amount of Ten Million Dollars.

SECOND CAUSE OF ACTION - MALICIOUS ABUSE OF PROCESS

60. Plaintiff restates and realleges each and every one of the allegations set forth in paragraphs #1 through 59 of this Complaint.

61. Each and every one of the lawsuits and the criminal contempt action set forth in paragraph 58(d) was brought with the malicious purpose of harassing and destroying the plaintiff pursuant to the written policies of Hubbard set forth in paragraph #11 hereof. Said lawsuits were not brought for the purpose of securing legitimate legal rights or privileges.

62. Hubbard and his agents conspired in writing to perpetrate "Operation Juggernaut," the purpose of which was to unlawfully use legal process to intimidate, threaten, harass and destroy "plaintiff."

63. Plaintiff has been damaged by defendant with respect to this Cause of Action in the amount of Ten Million Dollars.

WHEREFORE, plaintiff demands damages from defendant in the amount of Ten Million Dollars

THIRD CAUSE OF ACTION - MALICIOUS PROSECUTION

64. Plaintiff restates and realleges each and every one of the allegations set forth in paragraphs #1 through 63 hereof.

65. The following lawsuits and legal actions brought against the plaintiff and his agents and employees to date have been legally and fully terminated in favor of plaintiff. Said suits were brought by Hubbard through his agents without probable cause:

I. Church of Scientology of Nevada, Inc. v. Thomas Hoffman, Kevin Flynn, et al., Civil No.

LV-80-10-HEC (D. Nevada, 1980).

II. Church of Scientology of Nevada, Inc. v. Kevin Flynn and LaVenda Van Schaick, Civil No. 196880
Nevada Circuit Court.

III. Church of Scientology of Nevada, Inc. v. Michael Flynn, Civil No. 202573 Nevada Circuit Court.

IV. Cazares v. Church of Scientology of California, Inc., Civil No. 81-3472-CA-01, Volusia County Circuit Court, Fla., 1981).

V. Church of Scientology of California, Inc. v. Michael Flynn, Thomas Hoffman, Thomas Greene and Kevin Flynn, Civil No. CV-83-896-CBM (C.D. Calif. 1983).

VI. Church of Scientology of California, Inc. v.
Michael Flynn, Thomas Hoffman, Thomas Greene and
Kevin Flynn, CV-81-3259-CMB; CV-81-3260-CMB;
CV-81-3261-CBM; and CV-81-4109-CBM (C.D. Calif.
1981).

66. The foregoing lawsuits were brought for the malicious
~~purpose of harassing the plaintiff pursuant to the~~
unlawful conspiracy set forth in paragraph #58 hereof:

67. Plaintiff has been damaged by defendant on this Cause of
Action in the amount of Ten Million Dollars.

WHEREFORE, plaintiff demands damages from defendant in the
amount of Ten Million Dollars.

FOURTH CAUSE OF ACTION - INTENTIONAL INFLECTION
OF EMOTIONAL DISTRESS

68. Plaintiff restates and realleges each and every
allegation set forth in paragraphs 1 through 67 hereof.

69. All of the acts, conduct, plans, schemes and policies of Hubbard set forth in this Complaint were done for the purpose of "destroying" the plaintiff pursuant to the Fair Game Doctrine. Such a policy and the acts perpetrated pursuant thereto were intended to inflict emotional and mental distress on the plaintiff. Such acts, schemes, and policies, constitute extreme and outrageous conduct, intentionally perpetrated to inflict emotional distress on the plaintiff. Such conduct was "extreme and outrageous," beyond all bounds of decency and utterly intolerable in a civilized community. Hubbard's extreme and outrageous conduct was the cause of plaintiff's severe emotional distress, which distress was of such a nature that no reasonable man could be expected to endure it.

70. Plaintiff has been damaged by defendant on this cause of action in the amount of Ten Million Dollars.

WHEREFORE, plaintiff demands damages from defendant in the amount of Ten Million Dollars.

FIFTH CAUSE OF ACTION - TRESPASS

71. Plaintiff restates and realleges paragraphs #1 through 70.

72. Hubbard, through his agents, trespassed onto private property, which property was owned, controlled, and legally possessed by the plaintiff, for the unlawful purpose of stealing records, documents and information. Said private property was guarded, posted with no-trespassing signs, and protected by fencing and other protective obstacles. Notwithstanding all of the above, G.O. agents acting pursuant to the policies and orders of Hubbard, pursuant to a written scheme, trespassed onto plaintiff's premises at 12 Union Wharf, Boston, in the early morning hours, and used an electronic beeper system to avoid detection for the purpose of stealing plaintiff's trash and burglarizing his office.

73. Hubbard, through his agents, stole in excess of 20,000 documents and used said documents and information for the purposes set forth in this Complaint.

74. Plaintiff has been damaged by defendant, on this cause of action in the amount of Ten Million Dollars.

WHEREFORE, plaintiff demands damages from defendant in the amount of Ten Million Dollars.

SIXTH CAUSE OF ACTION - CONVERSION

75. Plaintiff restates and realleges paragraphs #1 through 74 hereof.

76. Hubbard, through his agents, stole and converted to his own use for the purposes set forth herein, documents and information stolen from the plaintiff's trash and directly from his office. Hubbard has failed to return said materials stolen, notwithstanding plaintiff's demand. Hubbard and his agents exercised domain over plaintiff's property inconsistent with plaintiff's rights.

77. Plaintiff has been damaged by defendant on this cause of action in the amount of Ten Million Dollars.

WHEREFORE, plaintiff demands damages from defendant in the amount of Ten Million Dollars.

SEVENTH CAUSE OF ACTION - INTERFERENCE WITH
CONTRACTUAL RIGHTS

78. Plaintiff restates and realleges paragraphs #1 through 77 hereof.

79. Plaintiff had a written contract with Sylvana Garritano to represent her in connection with a lawful claim against Hubbard and his agents.
80. Hubbard and his agents knew of the contract and induced Sylvana Garritano to break it by engaging in a series of acts designed to convince Garritano that plaintiff was harassing her as set forth below:
- a. Hubbard's agents followed Garritano in a car similar to the car of plaintiff's brother, and then had a second agent inform her that she was being followed.
 - b. Hubbard's agents provided Garritano with false information about plaintiff for the purpose of inducing her to break the contract.
 - c. Hubbard's agents brought Garritano to another attorney, paid the attorney's legal fees, and then issued false press releases that plaintiff had threatened Garritano unless she lied under oath.
81. Hubbard's agents routinely used records stolen from plaintiff's office to obtain the names and addresses of prospective clients who had contacted plaintiff's office. Hubbard's agents then contacted said prospective clients for the purpose of preventing them from retaining plaintiff.

82. Plaintiff has been damaged by defendant on this cause of action in the amount of Ten Million Dollars.

WHEREFORE, plaintiff demands damages from defendant in the amount of Ten Million Dollars.

EIGHTH CAUSE OF ACTION - INVASION OF PRIVACY

83. Plaintiff restates and realleges paragraphs #1 through 82 hereof.

84. Plaintiff further states that he has a right of privacy in all of the documents and information stolen by Hubbard, and his agents, from plaintiff's offices. Plaintiff's right of privacy is protected by M.G.L. ch. 214 Sec. 1(b).

85. Hubbard and his agents have violated plaintiff's right of privacy as set forth herein by using the documents and information as set forth in paragraphs #12 through 58 hereof.

86. Plaintiff has been damaged by defendant, on this cause of action in the amount of Ten Million Dollars.

WHEREFORE, plaintiff demands damages from defendant in the amount of Ten Million Dollars.

NINTH CAUSE OF ACTION - UNFAIR OR DECEPTIVE ACTS
IN VIOLATION OF M.G.L. Ch. 93A

87. Plaintiff restates and realleges paragraphs #1 through 86.

88. The parties are engaged in trade or business within the meaning of Mass. G.L.C. 93A.

89. The acts or practices of Hubbard and his agents as described herein were unfair and deceptive within the meaning of Ch. 93A and were committed willfully and knowingly.

90. Plaintiff has been damaged by defendant in the amount of Ten Million Dollars.

WHEREFORE, plaintiff demands treble damages in the amount of Thirty Million Dollars on this count, together with attorney's fees, interest and costs.

TENTH CAUSE OF ACTION - ASSAULT AND BATTERY

91. Plaintiff restates and realleges paragraphs #1-90.
92. The airplane incident described in paragraphs # 18 and 19 was intended and in fact did place plaintiff in immediate apprehension of bodily harm and in fact did injure him.
93. Plaintiff has been damaged by defendant in the amount of one million dollars on this count.

WHEREFORE, plaintiff demands damages from defendant in the amount of One Million Dollars.

ELEVENTH CAUSE OF ACTION -
VIOLATIONS OF THE RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT - 18 U.S.C. 1961 - 1968

94. Plaintiff realleges paragraphs #1 through 93 and further alleges:

95. This cause of action is brought under 18 U.S.C. sec. 1964 (c), which statute provides for treble damages for any person injured by reason of violation of 18 U.S.C. sec. 1962.
96. It is unlawful under 18 U.S.C. sec. 1962 for any person "employed by or associated with any enterprise engaged in, or the activities of which effect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprises' affairs through a pattern of racketeering activity..."
97. Defendant L. Ron Hubbard is an individual associated with Scientology organizations who has directly and indirectly conducted the affairs of said enterprises through a pattern of racketeering activity.
98. "Racketeering activity" is defined in 18 U.S.C. sec. 1961, as any two acts, within the past years of extortion chargeable under state law, or of mail fraud (18 U.S.C. s. 1341), or wire fraud (18 U.S.C. s. 1343), or obstruction of justice (18 U.S.C. s. 1503), or obstruction of criminal investigation (18 U.S.C. s. 1510), or racketeering (18 U.S.C. s. 1952). The defendant has within the last ten (10) years committed

multiple offenses of each type of crime listed above, in a manner described hereinafter.

99. The Church of Scientology was created in the 1950's by L. Ron Hubbard and his followers. It has at all times and presently exists, as one fully integrated, tightly organized enterprise, although Hubbard and his followers have attempted to mask this fact by creating a network of different corporations in many states. The Church of Scientology has at all times operated as a commercial, profit-making enterprise. Its commercial success has at all times depended largely on a skillful and deliberate pattern of fraud.
100. In the early 1960's, many of the fraudulent practices of the Church of Scientology became the subject of public criticism. Hubbard and his followers realized that the continued success of the enterprise depended entirely on widespread public ignorance concerning the actual motive of Scientology. Accordingly, they devised a plan to silence critics of Scientology and suppress all public discussion of governmental investigation of Scientology.
101. In the mid 1960's, Hubbard and his followers created the Guardian's Office. The Guardian's Office has since that

time become an integral part of every Scientology organization in the United States. All of the activities and affairs of the Guardian's Office are top secret within Scientology. Individuals controlling the local organization of Scientology, such as the Church of Scientology of Boston, Inc. also control the Guardian's Office and respond directly to the Hubbards. The actual offices used by the Guardian's Office are kept locked at all times, and non-Guardians are never permitted to enter without permission.

102. From its inception, Hubbard authorized the Guardian's Office to silence critics of Scientology and thwart investigations of Scientology by means of criminal and tortious acts. For many years the Guardian's Office has engaged in criminal activity against private citizens and government agencies who have dared to criticize or investigate Scientology. All of these activities were carried out while the Church of Scientology held itself out to the public as being a legitimate, law-abiding, nonprofit institution.

103. As a part of this overall scheme to thwart criticism or investigation of the Church of Scientology, Hubbard, his

followers, and the Guardian's Office at Hubbard's direction have committed acts of kidnapping and obstruction of justice against the United States Government and/or its witnesses before a Grand Jury. These acts are described in detail in the Stipulation of Evidence in the case of United States v. Mary Sue Hubbard, United States District Court for the District of Columbia, No. 78-401. Said acts meet the definition of "racketeering activity" as defined in 18 U.S.C. sec. 1961.

104. Hubbard, his followers, agents, servants and employees at the Guardian's Office, in the Church of Scientology have engaged in "racketeering", as defined by 18 U.S.C. s. 1952 by traveling interstate and utilizing interstate communications facilities as part of a scheme to commit extortion against the plaintiff as described hereinafter. Said acts of extortion meet the definition of "racketeering activity" as defined in 18 U.S.C. 1961.

105. Hubbard, his followers, and his agents, servants and employees at the Guardian's Office decided to silence the plaintiff by means of extortion. Guardian's Office agents in Boston traveled to Los Angeles to receive orders. Other orders were sent to Boston via interstate

wire communications. Their orders authorized a series of activities as described supra in paragraphs #5-56, designed to inhibit plaintiff from practicing law so long as he continued to represent individuals aggrieved by him and his agents, servants and employees at the Guradian's office and the Church of Scientology.

106. This activity was intended to extort the plaintiff's silence and was illegal under the Massachusetts G. L. Ch. 265, Sec. 25.

107. All of the acts described in paragraphs #97-106 are predicate acts of "racketeering activity" as defined in 18 U.S.C. s. 1961.

108. This scheme to extort the plaintiff's silence was carried out by a complex conspiracy of many persons, some of whom had no idea of the part their own acts played in the overall scheme. The scheme was facilitated and made possible by the complex interstate organization and interstate communications network of the Church of Scientology. The Church of Scientology is by written policy, formally committed to the use of criminal extortion to silence its critics. These policies are written by Hubbard and regarded as law by

loyal Scientologists. Hubbard's personal predeliction for the use of criminal means pervades the entire organization of Scientology, which adopts, publishes, and enforces as official policies, these criminal methods.

109. All of these activities described in paragraphs #94-108 above, constitute conduct of a person associated with the Church of Scientology undertaken to further the enterprise's affairs through a pattern of Racketeering activity as proscribed by 18 U.S.C. sec. 1962(c).

110. As a result of the foregoing activities the plaintiff was injured in his business in the following manner:

- i) as a result of the pattern of racketeering activities, the plaintiff has suffered severe emotional distress which has disabled him from practicing law as effectively as he might otherwise have.
- ii) As a further result of the pattern of racketeering activities, the plaintiff was forced to spend large amounts of time and resources defending frivolous lawsuits and filed against him at the direction of Hubbard, hereby preventing him from furthering his career.

WHEREFORE, the plaintiff demands treble damages from defendant in the amount of Thirty Million (\$30,000,000) Dollars, plus attorneys' fees.

By his attorneys,

HOLLINGSWORTH & ASSOCIATES

By Wayne B. Hollingsworth
Wayne B. Hollingsworth

By David M. Banash
David M. Banash
10 Union Wharf
Boston, Massachusetts 02109
(617) 227-5100

Dated: September 7, 1983

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

MICHAEL J. FLYNN,
Appellant,
v.
THE STATE OF FLORIDA and
J. ROBERT DURDEN,
Appellees.

CASE NO. 82-¹²⁵⁸~~1285~~

ORDER

IT IS HEREBY ORDERED AND ADJUDGED:

(1) That the Court's "Order" of August 11, 1982 constituting a Judgment of indirect criminal contempt is hereby vacated and adjudged to be null and void.

(2) That the subpoena from this Court served on Michael J. Flynn dated April 23, 1982 is hereby adjudged to be a nullity, and that, therefore, this Court is without threshold jurisdiction over the person of Michael J. Flynn.

(3) That the findings of this Court dated August 11, 1982 as hereinafter set forth are hereby vacated and adjudged to be null and void.

"That Michael J. Flynn be and he is hereby held in indirect criminal contempt for his conduct of rejecting the subpoena duly served upon him on the 19th day of April, A.D., 1982, and his filing of a Motion to Quash, which the Court finds not to be truthful, in that it affirmatively appears that the said Michael J. Flynn was in Clearwater, Florida, on personal business on the 23rd day of April, A.D., 1982, and wilfully failed to appear

RECEIVED

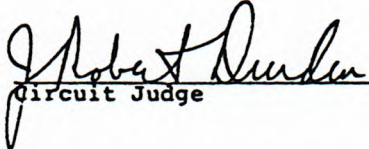
FEB 10 1983

ATTORNEY GENERAL
DAYTONA BEACH, FLA.

for the taking of his deposition. That such conduct, coupled with the untruthful verified Motion to Quash, has thwarted and interfered with the orderly processes of this Court and further interfered with the orderly disposition of this case."

(4) That the fine/sentence imposed on Michael J. Flynn in the amount of \$100.00 or 10 days in the County Jail is hereby vacated and adjudged to be null and void. The Clerk shall return to Michael J. Flynn the sum of \$100.00 paid by him as said fine/sentence.

DONE AND ORDERED in chambers at Daytona Beach,
Volusia County, Florida, the 10th. day of Feb.
1983.


Circuit Judge

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

MICHAEL J. FLYNN

Appellant,

v.

CASE NO. 82-1258

STATE OF FLORIDA and

J. ROBERT DURDEN

Appellee.

DATE: March 14, 1983

BY ORDER OF THE COURT:

Upon consideration of the February 10, 1983, order of the Circuit
Court for Volusia County, Florida, it is

ORDERED, sua sponte, that the above-styled appeal is hereby dismissed.

I hereby certify the foregoing is
(a true copy of) the original court order.

FRANK J. HABERSHAW, CLERK

By: *Paul W. Halliday*

Deputy Clerk

(COURT SEAL)

cc: Office of the Attorney General, Daytona Beach
Michael J. Flynn, Esquire
Honorable Judge J. Robert Durden

GABERDIEL and WARREN
Official Court Reporters

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA.

USE NO. 81-3472-CA-01

DIVISION F

GABRIEL CAZARES and MARGARET
CAZARES,

Plaintiffs,

vs.

THE CHURCH OF SCIENTOLOGY OF
CALIFORNIA, etc., et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

June 14, 1982

PATRICIA GABERDIEL
MARY F. WARREN
JAN BAGOZZI
CATHERINE L. FERRELL
SUSAN C. RIESDORPH

444 SEABREEZE BOULEVARD, SUITE 710
DAYTONA BEACH, FLORIDA 32018

MAIL: P.O. BOX 3333
PHONE 904/255-1263 &
255-1264

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA.

CASE NO. 81-3472-CA-01
DIVISION F

GABRIEL CAZARES and MARGARET
CAZARES,

Plaintiffs,

vs.

THE CHURCH OF SCIENTOLOGY OF
CALIFORNIA, etc., et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

The above and foregoing cause having come on to be heard
before the Honorable J. Robert Durden, Circuit Judge presiding,
on the 14th day of June, A.D. 1982, at the hour of 3:00
o'clock p.m., in Chambers at the Volusia County Courthouse
Annex, 125 East Orange Avenue, Daytona Beach, Florida, in
re: Motion in Suggestion of Contempt (as to Michael J. Flynn).

WHEREUPON, the following proceedings were had:

1 rather than to burden the Court, we will do it at a time and
2 place that is convenient, something that is commonly done
3 between counsel. I think Your Honor understands that for Mr.
4 Warren to file this Motion is an outrage.

5 Thank you.

6 MR. WARREN: Well, it may be an outrage, Your Honor, but,
7 of course, I couldn't help but overhear Mr. Flynn, as I sat
8 down here earlier this evening, that he was going to sue me
9 for abuse of practice and costs and all of these other
10 threatening things that goes with his type of conduct, but I
11 don't want to get into that.

12 What I want to advise the Court is the gist of our
13 suggestion of contempt and that is the matters set forth in
14 paragraph number seven, that Mr. Flynn has not been fully

15 truthful with this Court in his verified Motion and that is
16 the reason that we want the Court to set the hearing for the
17 rule to show cause, because, Your Honor, he didn't have a
18 hearing set before the City of Clearwater on the 23rd and he
19 knows that he didn't, because those hearings were canceled
20 until May 5th, long before and he knew that and he knew that
21 he wasn't going to be in those hearings from 9 to 5 on April
22 22nd and 23rd. The 23rd was a Friday, by the way, because we
23 have information that at his suggestion or at the suggestion
24 of Anthony J. Shoemaker, the City Manager, they were continued.
25 Those hearings were continued long before until May 5th, so

IN THE CIRCUIT COURT FOR VOLUSIA COUNTY, FLORIDA

CIRCUIT CIVIL NO. 81-3472-CA-01-P

GABRIEL CAZARES and
MARGARET CAZARES, his wife,

Plaintiffs,

vs.

THE CHURCH OF SCIENTOLOGY
OF CALIFORNIA, et al.,

Defendants.

VERIFIED MOTION TO QUASH DEPOSITION SUBPOENA
SERVED ON MICHAEL J. FLYNN, ESQUIRE

Michael J. Flynn, pro se, hereby moves this Honorable Court to quash the subpoena served on him on Monday, April 19, 1982 by the Defendants in the above entitled case, which subpoena requires attorney Flynn to appear for a deposition scheduled on Friday, April 22, 1982. In support of said Motion, attorney Flynn states as follows:

1. Attorney Flynn (the deponent) is a resident of Massachusetts where he also maintains an active law practice.

2. The deponent has no personal knowledge of any facts relating to the above case. The deponent has never represented or had any professional relationship as counsel for the Plaintiffs in said case. The deponent is involved in litigation in various jurisdictions against the Church of Scientology, but said litigation does not relate to the above case, other than the fact that the Church of Scientology is a party in separate litigation. There is no material issue in the subject suit which deponent could provide any testimony.

3. The deponent does not intend at this time to remain in the State of Florida throughout the time and date required for his deposition. Remaining in Florida throughout the time required

20

would constitute a considerable hardship on the deponent because of the requirements of his law practice in Massachusetts.

4. The Church of Scientology is unlawfully using legal process to harass the deponent and interrupt his law practice through the use of the deposition procedure in a case in which deponent has no involvement or personal knowledge relative to any issue. Church of Scientology has demonstrated a pattern of such judicial abuse as reflected by the subject matter of the above case, as well as numerous other frivolous and abusive law suits manufactured by Church of Scientology in many Courts in the United States. See eg., Allard v. Church of Scientology of California, App., 129 Cal. Rptr. 797 (2nd DCA 1976).

Wherefore, deponent respectfully requests that this Honorable Court quash the subpoena requiring attorney Flynn to appear for a deposition on the above case.

DATED this 21st day of April, 1982.

Michael J. Flynn
MICHAEL J. FLYNN, Pro Se
Signed under the pains and
penalties of perjury.

ATTESTATION IN SUPPORT OF AMICUS CURIAE BRIEF

The undersigned hereby subscribe their signatures to this attestation in support of the Amicus Curiae brief filed by our attorney, Paul Morantz. The undersigned support the position of Gerald Armstrong that the documents, tapes and materials presently held by the Court in the case of Church of Scientology v. Gerald Armstrong, No. C 420 153, should be released by the Court for public inspection. The undersigned, as present and former members of the Church of Scientology, have a right to know the contents of said documents for the following reasons:

- (1) We contributed our time, labor, money and support to L. Ron Hubbard and the Church of Scientology for a period of thirty years. We relied on Mr. Hubbard's professional qualifications and academic credentials, medical and health history, naval career record, moral integrity, the sincerity of his intentions to organize and develop a legitimate religion, his conduct in the management and operation of the Church, his purported resignation from Church management in 1966, his credibility and reliability for confronting and expressing the truth about himself and his participation in the Church, and his truthful exposition of Church practices, policies, doctrines, and financial management.
- (2) Many of us are aware that Gerald Armstrong was assigned by Mr. Hubbard to collect materials for a biography about himself to be written by Omar

Garrison, the author of several books about Scientology. We are aware that the biography was intended to be a highly favorable and laudatory biography about Mr. Hubbard. We are aware that the Church, through a Danish front corporation was paying Mr. Garrison for that purpose. We are aware that after collecting and reviewing factual data on Mr. Hubbard, both Mr. Armstrong and Mr. Garrison realized that a laudatory and favorable biography of Mr. Hubbard could not be written because many of the statements, representations, and materials published by the Church and Mr. Hubbard, about Mr. Hubbard's medical and health history, military record, professional and academic qualifications, integrity, truthfulness, participation in Church policies, practices and financial affairs and religious intentions, were false. We are aware that the documents collected by Mr. Armstrong, and reviewed by Mr. Garrison would assist us in determining the truthfulness of many of the statements and representations made to us which we relied upon.

(3) We are aware that the Church of Scientology will use almost any means to suppress the disclosure of the documents held by the Court in order to prevent the truth from being disseminated. We are particularly concerned that the Church will enter into an agreement with Mr. Garrison by which Mr. Garrison will forfeit any and all rights he has to possession of the documents. We are concerned that if the Church is able to regain possession of the documents, they will be destroyed and the

truth about Mr. Hubbard and the origins of the Church will forever be lost.

- (4) We believe that we who created, worked for, financed and supported the Church of Scientology in reliance upon Mr. Hubbard's biographical history, his integrity and moral purposes, as well as his participation in Church affairs, have a right to inspect documents and materials relative to these subjects.

WHEREFORE, BE IT KNOWN THAT WE HERETO SUBSCRIBE OUR SIGNATURES, together with our years of participation in the Church and moneys paid to it, for the purpose of obtaining the right to inspect, review and copy the documents and materials held by the Los Angeles Superior Court in the case of Church of Scientology v. Gerald Armstrong, Civil No. 420-153.

NAME

YEARS OF MEMBERSHIP

MONEYS PAID

John W. J. [unclear]	4 years	\$10,000
[unclear]	20	\$20,000
[unclear]	33 years	\$1,000
William Day	14 years	\$8,000
Maggie Gilday	10 years	\$45,000
Theresa Greckberg	15 years	\$5,000
REINHOLD SOMMERSTEDT	12 1/2 years	\$15,000
Amel Farnett	25 years	\$2,000
Brian Hamilton	24 years	\$2,500
Constance Hamilton	3 years	\$48,000.00
JAMIE SAMS Jamie Sams	2 yrs	\$1,000
JOEY M. [unclear]	1 yrs	\$1,000
NSusan Reed	13 yrs.	\$25,000
Sandy Taylor	11 yrs.	\$6,000
Pam Taylor		

NAME & ADDRESS
 Lisa Latta
 981 So. Hoover St.
 L.A. 90006
 Karen Jenkins (Karin Jenkins)
 4135 Howard Ave. #301
 L.A. CA 90044
 CHELSE BARRARD
 2830 Vineland Car 9622
 HOWARD MEYERS
 2307 Ben Lomax Dr.
 L.A., Ca. 90027
 GEORGETTE E.T. DANIEL
 18334 N. GARFIELD A.
 LOS ANGELES CA 90028
 CHARLIE FASSA
 4451 LAUREL AVE
 GLENDALE CALIF 91201

4 1/2 \$2000.00
 12 \$5000+

16 \$10,000 +
 12 \$5000+

DAVID FASSA
 4451 LAUREL AVE
 GLENDALE CA 91201
 FREDY CASTRIGNO
 2167 BURNWOOD TERR
 HOLLYWOOD 90028
 GLEN HODES
 857 MULLEN ST
 GLENDALE CA 91205
 15 yrs 16 yrs
 10 yrs - 8,500
 6 yrs 5000

RAYMOND
 RAY MC DONALD
 12686 S. HOGAN
 C.C. CA 92643
 25000
 3 yrs
 25000

NAME & ADDRESS

(5)

YEARS IN

\$ PAID

Herbert Dreiwitz -
145 N. Elgin St.
L.A. CA 90004
Herbert Dreiwitz

15 years

\$6,000

David E Herbert
8019 St Clair AVE
N. Hollywood Ca. 91605

10 years

\$12,000

Daniel E. J. J. J.

Lolie Sanders
2691 N. Lincoln
Altadena, Cal. 91001

15 years \$12,000

William D. Carl
P.O. Box 29008
L.A. CA 90029

14 years

\$28,000

Suzanne Gati
1832 N. Gafield Pl. #301
LA CA 90028

4 yrs

\$6,000

David Tweedy
1914 S. Vermont #7
LA CA 90007

10 yrs

\$28,000

DOUG HERRING
9971 ROBBINS DR
BEVERLY HILLS CA 90212

Doug Herring

10 yrs

\$17,000

Aileen Warsher
AILEEN WARSHER
GLENDALE, CA

9 years

\$5,000

(6)

Fatty Luria 1914 So. Vermont #7 10,000 yrs 10,000

M. Luria 5 Times Court Longfellow St South East Maddux Bldg 10,000 yrs 10,000

Camryn Whitehead 4256 Collis Ave 3,000 yrs 3,000

Thomas S. Hill 1900 E. Ocean Blvd 1,000 901 Long Beach, Ca. 90802 9

Ralph A. Brown 9708 Washburn Rd 17 22,000

Wendy Robinson 2016 Angyle Hollywood, Ca 90068 3 2,200

Alfred & FARR JR (Rt. 2, or 2305 T. Rita old road 15 yrs 18,000

162 MARION AVE 9,403

Len Loev 2520 N. Beachwood Dr #76 12 yrs 10,000

L.A. CA 90068

NAME & ADDRESS

YEARS IN

\$ PAID

(7)
Russell & W. Litchner 9256 Collin Ave
L.A., Ca. 90037
Lloyd Greenberg

9 \$15,000.00
16 \$15,000.00

UNION 2 IT 1011 1011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been
furnished, by mail, to the following attorneys of record this
27th day of April, 1982:

PAUL ANTINORI, ESQUIRE
601 E. Twiggs Street
Tampa, FL 33602

JACK CLARK, ESQUIRE
P.O. Box 1550
St. Petersburg, FL 33731

ALAN GOLDFARB, ESQUIRE
28 W. Flagler Street
12th Floor-Roberts Bldg.
Miami, FL 33130

CARL E. KOHLWECK, ESQUIRE
1821 Wilshire Blvd., Suite 210
Santa Monica, CA 90403

BENNIE LAZZARA, JR., ESQUIRE
610 W. DeLeon Street
Tampa, FL 33606

BARRETT S. LITT, ESQUIRE
617 South Olive Street
Suite 1000
Los Angeles, CA 90014

WILLIAM A. PATTERSON, ESQUIRE
447 Third Avenue North
St. Petersburg, FL 33701

WILLIAM KIRK, ESQUIRE
P.O. Box 1873
Orlando, FL 32802

DAN WARREN, ESQUIRE
P.O. Box 5355
Daytona Beach, FL 32018

CLYDE WILSON, JR., ESQUIRE
P.O. Box 1587
Sarasota, FL 33577

WALT LOGAN, ESQUIRE
Walt Logan, P.A.
6641 Central Avenue
St. Petersburg, FL 33710

TONY CUNNINGHAM, ESQUIRE
708 Jackson Street
Tampa, FL 33602

ALLEN WATTS, ESQUIRE
P.O. Box 493
DeLand, FL 32720

Michael J. Flynn
MICHAEL J. FLYNN, ESQUIRE
12 Union Wharf
Boston, MA 02109
(617) 523-1644

8

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MICHAEL J. FLYNN,)	
)	
Plaintiff,	)	Civil Action No.
	)	83-2642-C
vs.)	
)	
LAFAYETTE RONALD HUBBARD	)	MARY SUE HUBBARD'S
a/k/a L. RON HUBBARD,	)	MOTION FOR LEAVE TO
	)	INTERVENE; DECLARATION
Defendant,	)	OF MARY SUE HUBBARD
)	
and	)	[F.R.C.P. Rule
	)	24(a)(2), (b)(2)
MARY SUE HUBBARD,)	
)	
Intervenor-)	
Defendant.)	
)	

COMES NOW, MARY SUE HUBBARD, and moves for leave to intervene as a Defendant in this action, in order to assert the defenses and claims set forth in her proposed answer and counterclaim. As grounds for this motion, the applicant states:

1. She is the wife of Defendant L. RON HUBBARD and seeks intervention to protect her interests in his assets.
2. She is named in the Complaint as a co-conspirator with Defendant L. RON HUBBARD and seeks to protect her reputation which has been placed at issue by Plaintiff.
3. She intends to assert defense to Plaintiff's claim not likely to be asserted by Defendant L. RON HUBBARD who will not adequately defend her interest in his assets or her reputation.

4. She has asserted counterclaims against Plaintiff which have common questions of law and fact with Plaintiff's Complaint herein.

5. There is accompanying this motion an Answer and Counterclaim setting forth the claims and defenses for which intervention is sought.

This Motion is based upon the accompanying Declaration of Mary Sue Hubbard and Memorandum of Law, and upon such evidence as may be adduced at a hearing on this Motion.

Wherefore, the applicant prays that this Motion be granted.

Applicant requests oral argument on the foregoing motion.

DATED: September 30, 1983

Respectfully submitted,

BARRETT S. LITT
MICHAEL S. MAGNUSON
LAW OFFICES OF BARRETT S. LITT
617 South Olive Street
Suite 1000
Los Angeles, California 90014
(213) 623-7511

HARVEY SILVERGLATE
DAVID J. FINE
SILVERGLATE, GERTNER, BAKER & FINE
88 Broad Street
Boston, Massachusetts 02110
(617) 542-6663

Attorneys for Applicant
MARY SUE HUBBARD

C/S:5

DECLARATION OF MARY SUE HUBBARD

I, MARY SUE HUBBARD, declare and say:

1. I am the wife of L. Ron Hubbard, the sole named defendant in this action, Michael Flynn v. Lafayette Ronald Hubbard No. 83-2642-C (D. Mass). My husband and I have been married since 1952. I am also the Mary Sue Hubbard who is mentioned prominently in the complaint as my husband's agent in carrying out the alleged wrongs pled in the complaint.

2. I am submitting this declaration in support of my accompanying Motion to Intervene in this proceeding. The necessity of my intervention, as I will detail below, is the result of the following circumstances: 1) my husband is and has been in seclusion and, it is my belief, will not appear and defend this action; 2) plaintiff Michael Flynn is fully aware of this fact and, I believe, has filed this action, naming only my husband as a defendant, with the express design of obtaining a default judgment against my husband and in the belief that he will never be required to prove the allegations in his complaint; 3) I am dependent on my husband for my financial support, and am a primary legatee in his will, and therefore have a great financial stake in the outcome of this case, which seeks \$141 million dollars in damages, and which recovery threatens my financial support and future; 4) I held the position within the Church of Scientology structure throughout much of the time period alleged in the complaint that would have had supervisory responsibility for the activities alleged by Flynn, and therefore am the material party, or one of the material parties, who would

have directed many of the activities alleged if they had in fact occurred; 5) because of my relationship to my husband and my role in the Church of Scientology, my reputation and good name are directly impugned by the allegations in the complaint; and 6) I have a counterclaim against Mr. Flynn for abuse of process for the filing of this action, for abuse of process and malicious prosecution for the filing of a prior action by Mr. Flynn (as counsel), which action was dismissed and had been filed in order to identify my husband's location, and identify and secure my husband's assets for purposes, in part, of obtaining a successful default judgment here, and for libel for disseminating to the press the defamatory contents of Mr. Flynn's complaint both before and after its filing.

3. It is important to make one final introductory point. The circumstances giving rise to the plaintiff's complaint arise from developments too complex to detail here. However, the issues at hand cannot be properly understood unless it is clear that the present suit is one that is inextricably linked to the activities of various Churches of Scientology, to my husband's and my relationship to those activities, and to Michael Flynn's several years history of efforts, to date unsuccessful, to collect a substantial recovery for his clients, and thereby himself as well, in their lawsuits against various Churches of Scientology, my husband and myself. Both Mr. Flynn's complaint and my counterclaim center on the history, development and handling of these lawsuits.

4. I shall now proceed to elaborate the factual basis for the above statements.

MARY SUE HUBBARD HAS A FINANCIAL
AND ECONOMIC INTEREST IN THIS PROCEEDING.

5. My husband is virtually my sole source of support and maintenance. Since May, 1981, when I resigned my position with the Church of Scientology of California, I have had no employment which provides me with an independent income. Since 1981, I have regularly received substantial monthly checks from funds provided by my husband for my support. With insignificant exceptions, I have no other source of income. While I am presently in federal custody on an unrelated matter, I receive funds from my husband for my present support, and I anticipate that, in the future, I will continue to depend almost exclusively on the financial support provided me by my husband. In addition, I presently have no job skills which would provide me with an independent income comparable to that presently provided me by my husband.

6. In addition to receiving my husband's financial support, I am a primary personal legatee in his will, and have been substantially provided for in it. Although I am not familiar with all of my husband's assets, I do know that, in addition to personal property and other assets, my husband is the copyright holder of the large amount of books that he has written, numbering over a hundred, and is entitled to receive royalty payments on the continuing sales of these books. For example, his recently published Battlefield Earth has been listed both by Time and UPI among the top ten bestselling hardcover works of fiction. Should my husband predecease me, I would be

the beneficiary of a substantial portion of my husband's estate, which I believe at present is significant.

7. As L. Ron Hubbard's wife, I am determined to do everything I can to protect my husband's interests, including the preservation of his property. We have been married for over thirty years, and the tranquility and stability of our marriage is of great personal importance to me. However, in view of my own substantial dependence upon and interest in my husband's property, I have a direct, personal interest in my husband's property, and in preventing its unjust seizure. Should a default judgment be entered in this case because there is no party to demonstrate the invalidity of Mr. Flynn's allegations, and then be satisfied out of the property of my husband, I would be directly and personally seriously injured by the impairment, if not total destruction, of my husband's ability to support me, and by the diminution, partial or total, of his estate. In this regard, I note that Mr. Flynn is seeking \$141 million dollars in damages. In short, such a default judgment would have a catastrophic direct impact upon my financial interests, and would deprive me of property prior to any determination of the validity of plaintiff's allegations. I respectfully submit that such a scenario would work a substantial hardship upon me and, without any determination of the merits or plaintiff's allegations, would be unjust and unnecessary since I am ready and able to appear as an intervening defendant in this action.

8. Unless I am permitted to intervene in this action, I am gravely concerned that I will be deprived of my property and my

means of support by the utilization of procedural tactics by Mr. Flynn that avoid any examination of the merits of his claim.

L. RON HUBBARD IS IN SECLUSION.

9. My husband and I married in 1952 shortly after he had written the book Dianetics: The Modern Science of Mental Health. This was during the formative years of Scientology, which was an outgrowth of my husband's work in Dianetics. During the early 1950's, the philosophy of Scientology was developed by my husband, and its character as a fully developed religious philosophy took shape. While I will not attempt here to explain the basic features of Scientology's beliefs, it is critical that the court understand that Scientology beliefs are based solely upon research and writing conducted by my husband over the past thirty or more years. His research and writing are the basis, continually developing, of the organization and technology of Scientology. My husband is revered as the Founder of Scientology, and I believe he will be for generations of Scientologists to come.

10. Because of the central role that my husband has played throughout Scientology's development, attacks on Scientology by those who have been critical of it have focused in large part on him, and there have been many such attacks and controversys. While the substance of these matters is not important here, what is important is that the court understand the fact of the controversy and of the focus of critics of Scientology on my husband, for these facts help to explain my husband's style of life and, more particularly, why he presently chooses to be in seclusion.

11. Because my husband's work is so vital to Scientology, and because he sometimes feels the need to be able to work in a completely unimpeded way, he at times has gone into total seclusion with only a small number of personal aides. An example of this was in 1972 when he left for nearly a year and carried out a great deal of new research and work secretly in New York; no one, including myself, knew where he was, except those who were with him. He, of course, knew how to reach us, and, at times, he would request certain information which would be hand delivered to a personal aide who was with him, which would then be returned to him.

12. Somewhere around March, 1980, my husband again went into complete seclusion. While I did not discuss this fact with him before he left, it did not surprise me that he did so. As I have indicated, public controversy about Scientology had arisen at various times over the years. Early 1980 was such a time. The indictments of several Scientologists had resulted in convictions, including of myself. This fact alone served to swell public controversy and to spur a great variety of hostile press reports about Scientology and my husband; this was particularly so since I, L. Ron Hubbard's wife, was one of those convicted. In addition, at the time of the initial sentencing in that case (November, 1979), United States District Judge Richey publicly released tens of thousands of pages of Scientology documents that had been seized by the United States. This further inflamed public controversy and press attention. Finally, an individual named Julie Christofferson had sued one of the Churches of Scien-

tology in Oregon, and had gotten a judgment (which has since been reversed on appeal) of over two million dollars; this too added to the continuing public attention on Scientology. I believe that my husband concluded, properly as it turned out, that this controversy was likely to intensify and that, if he was to work on his research and writing unimpeded and without constant efforts from various sources to intrude on his work, his security and his privacy, he would have to go into seclusion. This action was consistent with his past method of ensuring that he could continue his work without interruption.

13. Because my husband highly values his constitutional right to privacy and is in seclusion, because (as I elaborate further on) he has not been responsible for day to day activities of any of the Churches of Scientology for many years and has not directed any of the activities alleged in the underlying complaint and in Mr. Flynn's other lawsuits, and because his work in further developing Scientology is the most important thing in the world to both him and to Scientology, I do not believe that he will appear in this proceeding even to defend himself against the completely baseless claims made by Mr. Flynn in his complaint. Indeed, I know of no one who knows where my husband is, including myself.

14. Mr. Flynn is fully aware of the fact that my husband is unlikely to appear in this case and, indeed, is, I believe, counting on that fact. I base this statement on the following facts:

- A. Mr. Flynn is the attorney for over a dozen plaintiffs suing the Church of Scientology, my husband and/or myself around the country, and is in some type of cooperative association with other attorneys representing clients suing us. In none of the suits where my husband is named has he appeared to personally defend the suits. (See ¶4 of the Counter-Claim accompanying this Motion to Intervene for a detailing of the suits in which my husband is named, which listing is incorporated by this reference).^{1/}
- B. In November, 1982, after having attempted unsuccessfully to obtain a financial recovery in the course of his litigation with the Church, Mr. Flynn acted as the attorney for Ronald DeWolf -- my husband's estranged son from a former marriage -- in filing a petition with the Superior Court of the State of California asking that my husband be declared a missing person whose estate was in need of court supervision and care, and that Ronald DeWolf be appointed trustee of my husband's

^{1/} There are two suits in the United States District Court for the Middle District of Florida, Burden v. Church of Scientology of California, et al., No. 80-501-C-T-K, and McLean v. Church of Scientology of California, et al., No. 81-714-C-T-K, in which an attorney has appeared on behalf of my husband. However, those appearances came about as the result of the California Church having asked an attorney to appear for my husband without any authority from my husband to do so. There is pending before those courts a motion by that attorney to withdraw as my husband's counsel. To my knowledge, my husband has never authorized an attorney to appear in any of these actions for him.

estate. See In re the Estate of L. Ron Hubbard, No. 47150 (Riverside County Superior Court).

I was able to appear as respondent in that suit and obtained a summary judgment ruling dismissing the petition.^{2/} Although my husband became aware of the pendency of the petition and although the petition sought to attach his whole estate, my husband never appeared in it. Instead, he only sent a letter and then a declaration to the court. In his declaration in that case my husband stated, "I am in seclusion of my own choosing," and "I am actively researching and writing ... in connection with the religion of Scientology." Hence, it is clear that Mr. Flynn is well aware of my husband's self-imposed seclusion.

- C. Mr. Flynn has recently filed in this case a document entitled Motion to Strike Letter Dated September 14, 1982, in which he recites his knowledge of my husband's lack of appearance in other cases, states that it "is speculation at this point that Mr. Hubbard will even appear," and refers to the possibility of a default

^{2/} This petition is relevant not only because it reflects Mr. Flynn's knowledge that my husband is unlikely to appear in the instant proceeding, but also because it is directly relevant to my counterclaim in this suit, to wit, that Mr. Flynn, despite his obvious conflict of interest, instigated and counseled Mr. DeWolf to file the probate action so that Mr. Flynn could identify and, if possible, secure my husband's assets, and/or identify his location, subsequent to which he would be in a position to file and serve this action only against my husband, secure a rapid default judgment, and then collect from the previously identified assets. (See ¶29 of this declaration and my accompanying counterclaim.)

being entered against my husband in this case. Thus, Mr. Flynn admits that he has no expectation that my husband will appear in this case.

L. RON HUBBARD'S ACTUAL LIABILITY FOR MANY
OF THE ACTS ALLEGED IN THE COMPLAINT
COULD ONLY BE AS A RESULT OF THE ACTS
OF MARY SUE HUBBARD.

15. The Flynn complaint alleges a massive conspiracy against Mr. Flynn, carried out by the Guardian's Office of the Church of Scientology and by various individuals associated with the Guardian's Office, all of which, including me, are alleged to be agents of my husband, acting on his direct orders. This conspiracy is alleged to have begun sometime in 1979 and continued until recently. For a substantial period of the time alleged in the complaint, any such activities by the Guardian's Office would have been done under my overall supervision, and my husband's alleged involvement and liability would have been through me and therefore directly dependent on my own involvement and liability. Indeed, most of the individuals named as having committed tortious acts against Mr. Flynn were Guardian's Office personnel over whom I had ultimate supervisory responsibility until my resignation from my Church position in May, 1981.

16. From 1969 until May, 1981, I held the position of Controller in the Church of Scientology of California. In that capacity, I was responsible for the coordination of the activities of all Guardian's Offices in the Churches of Scientology, including the United States Guardian's Office and the Guardian's

Office World Wide, with the overall management of all the Churches of Scientology around the world, and to oversee generally the management responsibilities of the Guardian's Office World Wide as they related to the various Guardian's Offices around the world.

17. The Guardian's Office was established and operated to act as a buffer between the Church's regular religious activities and the outside world, thus permitting the Church to carry out its internal and religious activities in the most favorable environment. The Guardian's Office was responsible for all litigation matters, all public relations matters, and all matters relating to disagreement between the Church and those outside the Church, among others. Hence, any advice from my husband relating to such matters was received in my office and known personally to me. While I was not personally familiar with the great majority of material sent to my office, as my office would receive copies of a tremendous amount of materials, I was personally familiar with all communications to or from my husband regarding any Guardian's Office activities because such communications went through me personally.

18. During my tenure as Controller, I had close personal and organizational contact with my husband,^{3/} and am personally familiar with the activities he engaged and did not engage in until May, 1981, as they related to Scientology. I was informed

^{3/} This statement should be qualified in that, at certain times, such as the past period, my husband was in seclusion and had no close contact with anyone, including me.

as a matter of regular practice of any contact coming from my husband that related to matters within the jurisdiction of the Guardian's Office.

18. My husband resigned as the Executive Director of the Church of Scientology of California in 1966, and subsequently held only the position of Founder and Author. His main function in the Church after 1966 was the further research and development of Scientology teachings and technology. Occasionally, he would give advice on one or another organizational problem or issue facing the Church, but he was not responsible for day to day management or organizational activities; nor did he in fact engage in such activities on a day to day basis after 1966. (Since March, 1980, he has had no direct involvement, so far as I am aware, in day to day Church management activities even on an occasional basis.)

19. My husband never had the responsibility to act as the overall supervisor of the Guardian's Office. The Guardian's Office was an autonomous department of the Church, and any responsibility for supervision of its activities by someone not actually a member of the Guardian's Office rested with me and those who worked in my office. My husband did not have regular contact with the general activities of the Guardian's Office. On occasion, his opinion might have been sought on a particular problem, or he might make a particular suggestion (such as the need to research the origin of false reports against the Church), but he neither controlled nor supervised Guardian's Office acti-

vities, and never assumed any position of ultimate control for its activities.

20. At no time did I or members of the Guardian's Office act as personal agents of my husband, nor did he ever authorize us to act in such a capacity. Rather, members of the Guardian's Office and I carried out our various functions as members of the Church staff.

21. I, through the Controller's Office, and not my husband, had responsibility for the general overseeing of the Guardian's Office World Wide, which in turn supervised the Guardian's Offices around the world through their continental management offices.

22. Michael Flynn has alleged in numerous of his cases that I am or was the second person in the Scientology command structure or hierarchy, that I operated the Guardian's Office pursuant to my husband's overall policy and acted as my husband's top agent in so doing, and that Scientology was run by my husband and me. Although he omitted such allegations in his present complaint, perhaps to try and downplay his allegations against me in order to blunt an effort on my part to intervene, numerous complaints in cases in which he is an attorney make such claims, thus demonstrating my centrality to the theory and merits of his allegations. For example:

- A. In the Second Amended Complaint in Burden v. Church of Scientology of California, et al., No. 80-501-Civ.-T-K, served april 29, 1982, in which my husband and I are named as defendants and in which Michael Flynn is counsel of record, it is alleged that

-- "L. RON HUBBARD (Hubbard) is the founder of California and at all times material to this complaint was, by virtue of his role as the founder and leader of Scientology, overall supervisor of the Guardian's Offices (G.O.) of California and overall supervisor of the Commodore's Messenger Org (C.M.O.)." (pg. 2)

-- "MARY SUE HUBBARD (M.S.H.) is the wife of Hubbard, the founder of California. M.S.H. held the title of 'Controller' and 'Commodore Staff Guardian' (CSG) and as the second person in the hierarchy of the Church of Scientology, had duties which included supervision of the Guardian's Office. M.S.H. exercised control of the Guardian's Office" (pg. 3)

-- "M.S.H. was the 'Controller' of 'California' and the supervisor of all Guardian's Office (G.O.) activity. M.S.H. acted as the agent of Hubbard and used 'California' to implement Hubbard's policies. The G.O. operated, dominated and controlled 'California' and all other Scientology organizations, and was an integral part of all of 'California's' operations, practices, policies and activities." (pg. 29)

B. In the Fourth Amended Complaint in Paulette Cooper v. Church of Scientology of Boston, et al., No. 81-681-Mc, dated June 29, 1982, in which my husband and I

are named as defendants and in which Michael Flynn is counsel of record, it is alleged that

-- "The defendant, L. Ron Hubbard, is the founder of the Scientology organization, author of Scientology publications and controls the administrative and financial decision of all Scientology Churches ..." (pg. 2)

-- "The defendant, Mary Sue Hubbard, wife of the founder of Scientology, is the head of the Guardian's Office and as such directs and is responsible for all covert illegal activities perpetrated in the United States by the Guardian's Office." (pg. 2).

-- "L. Ron Hubbard and Mary Sue Hubbard operate, control and maintain Boston and California for various illegal, fraudulent, and tortious purposes, including the illegal, criminal and tortious activity set forth in this Complaint." (pg. 3)

-- "L. Ron Hubbard and Mary Sue Hubbard throughout the period set forth in this Complaint have been engaged in illegal, criminal and tortious activities designed to perpetrate a nationwide scheme of fraud and infliction of personal injury." (pg. 3)

-- "In the mid 1960's, Hubbard and his followers created the 'Guardian's Office.' The Guardian's

Office has since that time become an integral part of every Scientology organization in the United States. The Guardian's Office is headed by Mary Sue Hubbard." (pg. 21)

-- "From its inception, the Guardian's Office was authorized to silence critics of Scientology and thwart investigations of Scientology by means of criminal and tortious acts. For many years the Guardian's Office has engaged in criminal activity against private citizens and government agencies who have dared to criticize or investigate Scientology." (pg. 2)

- C. In the consolidated complaints of Peterson, Jefferson, Garrity and Lockwood v. Church of Scientology of California, L. Ron Hubbard and Mary Sue Hubbard, Nos. 81-3529, 81-3261, 81-3260, and 81-4109 (C.D. Cal.) (CBM), respectively, in which Michael Flynn is an attorney for the plaintiffs (although not of record), the allegation is made that my husband controls all Scientology organizations, that I am the "chief executive and highest 'official' title holder of Scientology," that I "operate and control the organization [Scientology] under the direct control" of my husband, and that my husband and I "operate, control and maintain Scientology for various illegal and fraudulent purposes." (pg. 3)

D. In the Third Amended Complaint in Van Schaick v. Church of Scientology of California, No. 79-2491-G (D. Mass.), in which my husband and I are not named as defendants^{4/} and in which Michael Flynn is counsel of record, it is alleged that my husband is the founder of Scientology, has sole control over it, and that I am "the second person in the hierarchy of Scientology," "supervisor of the Guardian's Office," and in that capacity "specifically implemented the operation of the Fair Game Doctrine" which Mr. Flynn alleges he was the victim of in the underlying complaint.

23. In his complaint, Mr. Flynn makes reference to and relies upon a stipulation of evidence in the case of United States v. Mary Sue Hubbard, et al., No. 78-401 (D.C.C.), a case in which I was a defendant. That stipulation of evidence, which, as part of a plea bargain, was a stipulation of the evidence that the government claimed it would present, and not of the truth of any of that evidence, is relied on by Mr. Flynn in ¶9 of his complaint as part of his description of my husband's position within Scientology. Since Mr. Flynn is relying on this stipulation, I should point out that the stipulation asserts that I was in charge of the activities of the Guardian's Office and was second only to my husband in the Scientology hierarchy, thus supporting my point that Mr. Flynn's theory and allegations necessarily point to me in my role as Controller until my resignation in May,

^{4/} My husband was originally named as a defendant in that action and subsequently dropped.

1981. The stipulation reads that I "held the titles of 'Controller' and 'Commodore Staff Guardian' (CSG)," was the "second person in the hierarchy of Scientology" and "had duties which included supervision of the Guardian's Office." (pg. 8)

24. The Flynn complaint accuses not only my husband but me of knowing participation in a conscious conspiracy to destroy him. This conspiracy is alleged to have been carried out through the Guardian's Office over many years. The complaint names me as one of the agents in effecting the conspiracy. The alleged conspiracy's sweep is so broad that it is difficult to characterize, but it encompasses a plan to murder Flynn, steal from his office, destroy his law practice, harass him through the legal system, and other wrongful, illegal or unconscionable activity. I am clearly accused of this conduct by the complaint. When the complaint is read alone, or especially is viewed in light of Mr. Flynn's long standing claim that I was the person who ran the Guardian's Office on my husband's orders, it is clear that I am in fact accused by the complaint of being a central and key figure in this alleged conspiracy. I note that one of Mr. Flynn's "causes of action" is for a RICO violation and that the language of that cause of action is virtually identical to the RICO allegation contained in Paulette Cooper v. Church of Scientology of Boston, et al., No. 81-681-MC (D. Mass.), except that in the Cooper allegations my husband and I are jointly accused of operating Scientology as a racketeering enterprise whereas in the underlying complaint only my husband is accused

directly of racketeering.^{5/} (See ¶22(B), above.) This again reflects the fact of my central role in Mr. Flynn's theory and allegations, and my consequent interest in responding to them.

25. The complaint filed by Mr. Flynn in large part alleges specific wrongdoing by the Guardian's Office during the period of time when it was my responsibility to supervise the overall activities of the Guardian's Office in my capacity as Controller. Indeed, it makes specific accusations for that time period against individual Guardian Office staff members who were my juniors, including against members of my own staff in the Controller's Office. I point this out to show my personal interest in responding to these allegations and the centrality of my activities to Mr. Flynn's allegations. Among the allegations in Mr. Flynn's complaint which relate directly to me in my former capacity as Controller of the Church of Scientology of California are the following:

- A. ¶'s 16 and 17 of the complaint allege that Flynn and his clients received, between July and September, 1979, harassing phone calls conducted by several Guardian's Office staff members. Among those named as having engaged in this activity is James Mulligan, who, at that time, was a member of my staff in the Controller's

^{5/} Actually, at one point in the underlying complaint, at ¶101, Mr. Flynn -- in the context of his RICO allegation -- states that "individuals controlling the local organizations of Scientology ... report directly to the Hubbards," i.e., my husband and myself. Apparently, in drafting that paragraph of his complaint, Mr. Flynn neglected to change that language contained in the Cooper RICO complaint so that it would refer only to my husband.

that time, was a member of my staff in the Controller's Office and who reported directly to me.

- B. ¶'s 18 and 19 of the complaint allege that, on October 19, 1979, agents of the Guardian's Office placed water balloons in Flynn's airplane gas tank in an attempt to murder him. The individuals named are my Controller's Office staff member, named above, James Mulligan, and Joseph Lisa, who was a Guardian's Office staff member at the time. Hence, it is obvious that Flynn is claiming that I was personally responsible for this alleged attempt on not only his life, but that of three other people, including his child.
- C. In ¶21 of his complaint, Flynn alleges that the conviction of several of the "highest officials" in the Guardian's Office evidences the conspiracy he alleges. I was one of the defendants in that case, which is entitled United States v. Mary Sue Hubbard, et al., No. 78-401 (D.D.C.).
- D. ¶'s 23 through 29 of Flynn's complaint allege that, in late 1979 and throughout 1980, Flynn was the subject of a campaign of hundreds of instances of harassment and numerous malicious lawsuits and bar complaints filed against him. All of this is alleged to have been conducted by the Guardian's Office, over which I had supervisory responsibility during this period.
- E. ¶'s 30 and 31 of the complaint allege that during 1979, 1980 and 1981, the Guardian's Office stole documents

from Flynn. Again this claim relates directly to me in my capacity as Controller, and again James Mulligan from my office is named as having directly participated in this alleged activity.

- F. ¶32 of Flynn's complaint contains a broad sweep of allegations concerning alleged efforts to destroy his reputation and legal practice, all carried out through the Guardian's Office, and all apparently occurring while I was the Controller.
- G. ¶'s 33 and 34 of the Complaint allege improper activities in litigation during the year 1980, while I was Controller. The responsibilities of the Guardian's Office and, ultimately, of the Controller's Office, included litigation matters.
- H. ¶35 alleges theft from Flynn by the Guardian's Office in January, 1981, when I was the Controller.
- I. ¶'s 36 through 39 of the complaint allege that the Guardian's Office wrongfully obtained and used information concerning Flynn's litigation strategy and concerning the establishment of a corporation for his Scientology litigation called Flynn Associates Management Corporation (FAMCO). I was the Controller at the time that the Church discovered Mr. Flynn's plans in regards to FAMCO.
- J. In ¶55 of the complaint, Flynn complains of allegedly libelous statements made about him by agents of the

Guardian's Office in December, 1979, and April, 1981, periods during which I was Controller.

MARY SUE HUBBARD'S REPUTATIONAL INTERESTS

ARE IMPLICATED BY THE FLYNN COMPLAINT.

26. As I have already explained, Mr. Flynn's complaint accuses me personally of being a participant in the conspiracy he alleges. His allegations are, in all material respects, false both regarding my husband and myself. If I am unable to intervene in this action, and in light of the fact that it is unlikely that my husband will appear, then these allegations will stand unchallenged and may even result in a default, which in turn will give rise to the inference that the allegations have merit and substance. Thus, only if I am able to intervene will I be able to prevent serious harm to my reputation. This is particularly important to me because, quite frankly, the fact of my conviction in United States v. Mary Sue Hubbard, et al., No. 78-401 (D.D.C.), makes the press and the public more susceptible to claims of wrongful conduct by me. I have acknowledged acts that were wrong which I did in connection with the above criminal case, and I have paid my debt to society for them. But this does not make me grist for the mill of anyone who chooses to cast unfounded claims of criminality against me, as Mr. Flynn has done. I am prepared to and intend to defend against Mr. Flynn's complaint and to show that it is groundless and pursued for self-serving and avaricious ends. I should be permitted to defend my own good name.

MARY SUE HUBBARD'S COUNTER-CLAIM
AGAINST MICHAEL FLYNN RAISES ISSUES
INEXTRICABLY INTERWOVEN WITH THE
ISSUES IN MICHAEL FLYNN'S COMPLAINT.

27. Further, the validity of Mr. Flynn's complaint and its effect on my reputation is directly raised as an issue in my counterclaim filed concurrently with this motion. One of the counts in the counterclaim is for libel based on the fact that Mr. Flynn provided to the press, prior to and after the filing of his suit, his complaint in this case. Prior to the filing of the suit, he disseminated a draft which contained the same allegations regarding me that are contained in the version of the complaint filed by Mr. Flynn. And, after its filing, it appears that he was involved in initiating its dissemination to the press. My counterclaim puts the truth or falsity of Mr. Flynn's allegations in the underlying complaint regarding me in issue, and puts the harm to my reputation in issue as well. Hence, it seems reasonable, and to conserve judicial resources, to simultaneously allow me to appear as a defendant in the Flynn complaint since there is such an overlap with the issues raised in my libel counterclaim.

28. In addition, the other claims in my counterclaim relate to and are bound up with the actual issues raised in Mr. Flynn's complaint. This is so because the trial of Mr. Flynn's allegations will focus on the methods and means used to defend against the flood of cases which he has filed against various

Churches of Scientology, my husband, and myself. In effect, Mr. Flynn is claiming that improper, illegal and tortious activities were carried out by my husband, myself and the Church in defending against his lawsuits and in matters flowing from the development of that litigation. It is important to understand this because the other claims in my counterclaim all relate to that same issue, but from the other side, so to speak. That is, my claims are based upon Mr. Flynn's malicious and abusive employment of the legal system at certain stages in the litigation for collateral and/or improper purposes. Mr. Flynn's claims and mine overlap and are inextricably interwoven in that they both raise the issue of who has acted improperly and tortiously in the course of the litigation.

29. Specifically, my counterclaim alleges that Mr. Flynn became embroiled in litigation against the Church, my husband and myself to the point that it was the focus of his practice; that he had planned and hoped for a quick and large financial return, which he was unable to obtain; that he found himself bogged down in the litigation with questionable prospects of a quick recovery or even any recovery; that he realized that, while the Church and I appeared and defended these suits, my husband was unavailable and did not; that he, in an effort to gain the most rapid financial recovery, attempted to obtain default judgments against my husband, but discovered that he was unable to do so in suits in which the Church and I were named and appeared; that he determined to find a vehicle which would permit him to identify

and if possible secure my husband's assets, and/or identify his whereabouts, for purposes of his other litigation and for purposes of having assets available to him to collect on a default judgment; that he devised a plan to identify those assets and/or my husband's whereabouts, and then sue my husband only so that he could obtain a quick default judgment against him; that, as part of his plan, he counseled my husband's estranged eldest son, Ronald DeWolf, to file a probate suit to declare my husband a missing person whose estate was in need of court supervision; that such a suit was in fact filed, and I was forced to appear and defend it; that I was granted summary judgment in that suit; that that suit was filed without probable cause and for improper collateral purposes of trying to force a financial settlement in Mr. Flynn's cases and of identifying my husband's assets and/or whereabouts for use in other cases, including the underlying complaint; that Mr. Flynn had a conflict of interest in acting as DeWolf's counsel but did so nonetheless; that Mr. Flynn did in fact use the information he obtained from the probate suit in other suits, and even was held in contempt of court for violating a court order for doing so; that these acts, and other related ones which I have not detailed, constituted malicious prosecution and abuse of process in the conduct of the probate suit; that, having improperly discovered information about my husband's financial affairs through the probate suit, Mr. Flynn then filed the underlying complaint herein, naming as a defendant only my husband with the objective and in the expectation that my husband would not appear to defend and that Mr. Flynn would thereby

obtain a rapid default judgment, and then collect on my husband's assets; that Mr. Flynn did not have a reasonable or good faith belief in the allegations in the underlying complaint, or in my husband's relationship to them; that Mr. Flynn abused process in his dissemination of the complaint to the press; and that the filing of the underlying complaint constitutes an abuse of judicial process. (My full counterclaim is submitted concurrently with this Motion to Intervene, and by this reference I incorporate its allegations as if fully set forth herein).

30. As even this cursory description of the allegations in my counterclaim demonstrates, my counterclaim and Mr. Flynn's allegations are inextricably bound up with each other. Indeed, they are mirror images of each other, as the central allegations of both relate to alleged tortious conduct in the conduct of Mr. Flynn's "Scientology litigation." I am fully prepared to defend my actions in the course of Mr. Flynn's flood of litigation against the Church, my husband, and myself, which is what his complaint claims to have been tortious, and to show that it is in fact Mr. Flynn who has acted improperly in the course of this litigation, and that it is Mr. Flynn -- not my husband or myself -- who has engaged in tortious conduct in the course of this litigation. I am fully prepared to show that neither my husband nor I have committed the wrongful acts alleged by Mr. Flynn in his complaint. I am fully prepared to show that, for the majority of the wrongful activity alleged in the complaint, my husband would have acted only through me, and that he did not do so.

CONCLUSION

32. For all of the reasons stated above, I urge that this court grant me leave to intervene as a defendant and counter-claimant in this case. If I am not permitted leave to do so, I will be grievously harmed economically because of my personal interest in my husband's finances and estate; I will be grievously harmed because of the damage it will cause to the tranquility and future of my marital relationship; and I will be grievously harmed because of the damage that will be done to my reputation and to my peace of mind. If I were not granted leave to intervene, the issues raised in my counterclaim would nonetheless be pursued by me in a separate action, and greater duplication of judicial resources would result. I realize that, even if I am granted leave to intervene, the legal issue of whether a default will be entered against my husband if he does not appear will remain. However, even if a default were to occur in that situation, my presence in the suit would permit a determination of the claims on their merits, which in turn could significantly affect the handling by the court of any determination of default as well as affect the handling of damages. In any event, it is in my interest to appear and defend this suit regardless of how the court may ultimately resolve the issue of a non-appearance by my husband. I urge that this court grant my request and ensure that the merits of Mr. Flynn's allegations can and will in fact be determined in the course of an adversary proceeding.

I declare, under penalty of perjury and under the laws of the United States, that the foregoing is true and correct.

Executed at Lexington, Kentucky, on September 28, 1983.

MARY SUE HUBBARD

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MICHAEL J. FLYNN,	)	CIVIL ACTION NO. 83-2642-C
)	
Plaintiff,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
v.	)	MARY SUE HUBBARD'S APPLICATION
	)	FOR LEAVE TO INTERVENE
LAFAYETTE RONALD HUBBARD)	
a/k/a L. RON HUBBARD,)	
)	
Defendant,)	
)	
and)	
)	
MARY SUE HUBBARD,)	
)	
Intervenor-)	
Defendant.)	

INTRODUCTION

Movant Mary Sue Hubbard seeks to intervene as a defendant in this action to protect her interests in the assets of the sole defendant L. Ron Hubbard, her husband of more than thirty years. She also seeks to protect her reputation which has been placed in issue by the complaint which names her as a primary agent of her defendant husband in the perpetration of the alleged tortious acts. As an intervenor, Mrs. Hubbard intends to defend against the allegations in the complaint in order to protect these interests. In addition, Mrs. Hubbard asserts counterclaims which require the litigation of issues common to the underlying complaint, and judicial economy is best served by their determination in a single proceeding.

Mrs. Hubbard has accompanied her Application with an extensive, detailed declaration which sets forth the factual circumstances surrounding her request. The factual basis in support of Mrs. Hubbard's intervention can be summarized as follows: (1) her husband is and has been in seclusion and, it is her belief, will not appear and defend this action; (2) Plaintiff Michael Flynn is fully aware of this fact and, she believes, has filed this action, naming only her husband as a defendant, with the express design of obtaining a default judgment against him and in the belief that Flynn will never be required to prove the allegations in his complaint; (3) she is dependent on her husband for her financial support and is a primary legatee in his will, and therefore has a great financial stake in the outcome of this case, which seeks \$141 million dollars in damages; (4) she held the position within the Church of Scientology structure throughout much of the time period alleged in the complaint that would have had supervisory responsibility for the activities alleged by Flynn, and therefore is a material party, who would have directed any of the activities alleged if they had in fact occurred; (5) because she has been named in the complaint as having participated in the tortious acts and because the complaint has been circulated to the press by Plaintiff, her reputation and good name are directly impugned by the allegations in the complaint; and (6) she has a counterclaim against Mr. Flynn (discussed infra) which raises the same issues of fact as does Mr. Flynn's complaint. Declaration of Mary Sue Hubbard, ¶2.

In this memorandum, movant first sets forth in a

statement of relevant facts outlining both Mrs. Hubbard's interests in intervention and Mr. Flynn's improper motivations in prosecuting this lawsuit. Movant then shows at Section "I" of her Argument that the interests she seeks to protect entitle her to intervention as a matter of right. Nonetheless, movant also shows at Section "II" of her Argument that, in the alternative, permissive intervention is appropriate because she intends to defend against the allegations of the complaint, thereby litigating common questions of fact and law. It is shown that there can be no undue prejudice or delay caused by permitting her to intervene at this early date to defend against Plaintiff's allegations. It is also pointed out that intervention would make possible the judicial economies which would result from the concurrent litigation of the common questions raised by the movant's counterclaims and by her defense to the underlying complaint.

STATEMENT OF FACTS

A. Mary Sue Hubbard Has A Substantial Interest
In The Outcome Of This Action And Is A
Central Figure In Its Allegations

Mary Sue and L. Ron Hubbard, who is presently the sole defendant in this action, have been married for over thirty years. Declaration of Mary Sue Hubbard, ¶1. Mrs. Hubbard is solely dependent on her husband for her support, and she is well provided for by him. She has no job skills which would allow her to earn an income comparable to

that provided her by her husband. Furthermore, she is a primary legatee to her husband's substantial estate.

Declaration of Mary Sue Hubbard, ¶'s 5-6. Hence, she has an obvious and readily identifiable interest in the outcome of this case, which is seeking \$141 million in damages from Mr. Hubbard and which therefore severely threatens her present and future financial security.

Mrs. Hubbard also explains that she considers it unlikely that her husband will appear and defend the suit -- whose material allegations she is prepared to disprove -- because he is and has been in seclusion for several years. Declaration of Mary Sue Hubbard, ¶'s 12-13. Indeed, Mr. Flynn is fully aware of this fact and believes that Mr. Hubbard will not appear in this case, he has so implied in a document he filed in this case, where he states that "it is speculation at this point that Mr. Hubbard will even appear," and makes reference to the possibility of Mr. Hubbard defaulting. Declaration of Mary Sue Hubbard, ¶14(C). This statement of Mr. Flynn's is no surprise since he is involved in numerous suits in which Mr. Hubbard is named as a defendant and has not appeared, and since Mr. Flynn unsuccessfully represented Mr. Hubbard's estranged son in an effort, instigated by Mr. Flynn, to attach Mr. Hubbard's whole estate on the ground that Mr. Hubbard was a "missing person." See Declaration of Mary Sue Hubbard, ¶14(A) and (B), and Mary Sue Hubbard's counterclaim, ¶'s 11-28.

Not only does Mrs. Hubbard have a paramount interest in the outcome of this proceeding, particularly in light of the

unlikelihood of her husband's appearance, but she herself is a central figure in the complaint's allegations. The complaint alleges that she was an agent of her husband in carrying out the claimed conspiracy against Mr. Flynn, which includes allegations of attempted murder, theft, and other illegal and unconscionable acts designed to destroy him. In reality, since the conspiracy is alleged to have occurred through the Guardian's Office of the Church of Scientology, and since Mrs. Hubbard (not Mr. Hubbard) had the responsibility of general supervision of the Guardian's Office for much of the period alleged in the complaint, Mrs. Hubbard is a key figure in the issues raised in the complaint. Declaration of Mary Sue Hubbard, ¶'s 15-21 and 25. In his other complaints against Mr. Hubbard, in most of which Mrs. Hubbard is also named as a defendant, Mr. Flynn gave Mrs. Hubbard a much more prominent role than he has in the instant complaint, perhaps because here he is attempting to sue only Mr. Hubbard and obtain a rapid default. See counterclaim of Mary Sue Hubbard. Hence, Mrs. Hubbard's reputation is clearly impugned in the complaint, and would be further damaged if the complaint could not be litigated on the merits.

B. Mr. Flynn's Effort To Obtain A Default Without Having To Prove His Case Is The Latest In A Long Series Of Litigation Tactics Which Should Not Be Contenanced And Which Are The Subject Of A Counterclaim That Should Be Heard In The Context Of This Suit

This lawsuit is the latest in a long series of lawsuits brought by Mr. Flynn on behalf of numerous clients against various Churches of Scientology, Mr. Hubbard, and Mrs. Hubbard. The complaint essentially alleges that the methods of defense against this flood of lawsuits were improper, tortious, even criminal. Mrs. Hubbard, on the other hand, contends that it is not she or her husband or the Scientology Churches which have used improper and tortious methods in the course of these lawsuits, but that it is Mr. Flynn who has done so and that this complaint is the latest in a series of tortious acts engaged in by Mr. Flynn in an effort to achieve a financial recovery from his mammoth investment in this litigation.

Hence, Mrs. Hubbard has filed a counterclaim in this action, which counterclaim raises the identical issues as Mr. Flynn's complaint, except from the other side, i.e., it raises the issue of tortious conduct in the course of Mr. Flynn's "Scientology litigation", except by Mr. Flynn, not by Mr. or Mrs. Hubbard.

The counterclaim alleges that Mr. Flynn became embroiled in litigation against the Church, and Mr. and Mrs. Hubbard to the point that it was the focus of his practice; that he had planned and hoped for a quick and large

financial return, which he was unable to obtain; that he found himself bogged down in the litigation with questionable prospects of a quick recovery or even any recovery; that he realized that, while the Church and Mrs. Hubbard appeared and defended these suits, her husband was unavailable and did not; that Mr. Flynn, in an effort to gain the most rapid financial recovery, attempted to obtain default judgments against Mr. Hubbard, but discovered that he was unable to do so in suits in which the Church and Mrs. Hubbard were named and appeared; that he determined to find a vehicle which would permit him to identify and if possible secure Mr. Hubbard's assets, and/or identify his whereabouts, for purposes of Mr. Flynn's other litigation and for purposes of having assets available to him to collect on a default judgment; that Mr. Flynn devised a plan to identify those assets and/or Mr. Hubbard's whereabouts, and then sue Mr. Hubbard only so that he could obtain a quick default judgment against him; that, as part of his plan, he counseled Mr. Hubbard's estranged eldest son, Ronald DeWolf, to file a probate suit to declare Mr. Hubbard a missing person whose estate was in need of court supervision; that such a suit was in fact filed, and Mrs. Hubbard was forced to appear and defend it; that she was granted summary judgment in that suit; that that suit was filed without probable cause and for improper collateral purposes of trying to force a financial settlement in Mr. Flynn's cases and of identifying Mr. Hubbard's assets and/or whereabouts for use in other cases, including the underlying complaint; that Mr. Flynn had a conflict of interests in acting as DeWolf's

counsel but did so nonetheless; that Mr. Flynn did in fact use the information he obtained from the probate suit in other suits, and even was held in contempt of court for violating a court order for doing so; that these acts, and other related ones, constituted malicious prosecution and abuse of process in the conduct of the probate suit; that, having improperly discovered information about Mr. Hubbard's financial affairs through the probate suit, Mr. Flynn then filed the underlying complaint herein, naming as a defendant only Mr. Hubbard with the objective and in the expectation that he would not appear to defend and that Mr. Flynn would thereby obtain a rapid default judgment, and then collect on Mr. Hubbard's assets; that Mr. Flynn published the contents of the underlying complaint to the press on two or more occasions, thereby defaming Mrs. Hubbard; that Mr. Flynn did not have a reasonable or good faith belief in the allegations in the underlying complaint, or in Mr. Hubbard's relationship to them; that Mr. Flynn abused process in his dissemination of the complaint to the press; and that the filing of the underlying complaint constitutes an abuse of judicial process.

In summary, what is going on in this case is that Mr. Flynn, having failed to obtain any recovery from his years of litigation against the Hubbards and various Churches of Scientology, has embarked on the road of making sweeping and unfounded allegations in this complaint and sued only Mr. Hubbard with the sole objective of obtaining a default judgment against him, thus avoiding a trial on the merits. This is the latest in a series of improper and tortious acts of

Mr. Flynn designed to obtain a recovery from this litigation. After having named Mrs. Hubbard in countless lawsuits for her and her husband's alleged wrongful conduct in "controlling and directing" the Church of Scientology, he has now intentionally excluded her as a defendant in a clear attempt to prevent her defending her interests, thereby permitting his rush to default. We now turn to a discussion of the legal standards applicable to intervention and show that Mrs. Hubbard is entitled to appear and defend in this action.

ARGUMENT

I

INTERVENTION OF RIGHT

Intervention as a matter of right is governed by Rule 24(a) which reads as follows:

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Intervention under Rule 24(a)(2) requires the movant to make three showings: (1) that the movant has "an interest relating to the property or transaction which is the subject of the action"; (2) that the lawsuit "may as a practical matter

impair or impede his ability to protect that interest;" and (3) that the movant's interest is not adequately represented by an existing party. The remainder of this section will show that Mrs. Hubbard meets this standard for establishing intervention as a matter of right.

A. Mrs. Hubbard Has Two Interests Which Support Intervention

There is no clear formulation of the kind of interest required to meet the first prong of Rule 24(b)(2). The United States Supreme Court has stated that, to meet this prong, a movant must show a "significantly protectable interest." Donaldson v. United States, 400 U.S. 517, 531, 91 S.Ct. 534, 27 L.Ed.2d 580 (1971). Similarly, the requisite interest has been defined as a "direct, substantial, legally protectable interest in the proceedings." Diaz v. Southern Drilling Corp., 427 F.2d 1118, 1124 (5th Cir. 1970) quoting Hobson v. Hansen, 44 F.R.D. 18, 24 (D.D.C. 1968) (Skelly Wright, J.). However, the District of Columbia sitting en banc in the appeal of the Hobson v. Hansen case recognized in Smuck v. Hobson, 408 F.2d 175, 179 (D.C. Cir. 1969) that the "interest" requirement has not and cannot be well defined when it ruled as follows:

"The effort to extract substance from the conclusory phrase 'interest' or 'legally protectable interest' is of limited promise. Parents unquestionably have a sufficient 'interest' in the education of their children to justify the initiation of a lawsuit in appropriate circumstances, as indeed was the case for the plaintiff-appellee parents here. But in the context of intervention the question is not

whether a lawsuit should be begun, but whether already initiated litigation should be extended to include additional parties. The 1966 amendments to Rule 24(a) have facilitated this, the true inquiry, by eliminating the temptation or need for tangential expeditions in search of 'property' or someone 'bound by a judgment.' It would be unfortunate to allow the inquiry to be led once again astray by a myopic fixation upon 'interest.' Rather, as Judge Levantahal recently concluded for this Court, '[A] more instructive approach is to let our construction be guided by the policies behind the 'interest' requirement. * * * [T]he 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process."

* * *

"This does not imply that the need for an 'interest' in the controversy should or can be read out of the rule. But the requirement should be viewed as a prerequisite rather than relied upon as a determinative criterion for intervention." (Footnotes omitted.)

The Supreme Court's first opportunity to interpret the "interest" requirement of Rule 24(a)(2) after the 1966 amendment to Rule 24 came in the case Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129, 87 S.Ct. 932, 17 L.Ed. 2d 814 (1967). The Supreme Court quoted extensively from the Advisory Committee's comments at footnote three including the following passage:

"If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene, and his right to do so should not depend on whether there is a fund to be distributed or otherwise disposed of. Intervention of right is here seen to be a kind of counterpart to Rule 19(a)(2)(i) on joinder of persons needed for a just adjudication: where, upon motion of a party in an action, an absentee should be joined so that he may protect his

interest which as a practical matter may be substantially impaired by the disposition of the action, he ought to have a right to intervene in the action on his own motion." (Emphasis in original.) 386 U.S. at 134.

The Supreme Court then applied this standard to Cascade Natural Gas Corp. ("Cascade"). Cascade's interest was based on the outcome of a court ordered divestiture of Pacific Northwest Pipeline Corporation ("Northwest") by El Paso Natural Gas Company which resulted from a violation of Section 7 of the Clayton Act. Cascade was a distributor of natural gas in Oregon and Washington and Northwest was its sole supplier of natural gas. Cascade was found to have an interest in the divestiture plan - the relief resulting from the lawsuit - because it would be dependent on the newly created company for its supplies. The Supreme Court held that Cascade's interest in the outcome of the lawsuit was a sufficient interest to permit intervention as a matter of right.

Mrs. Hubbard has two interests that similarly satisfy Rule 24(a)(2). First, she has an economic interest in the outcome of the lawsuit. This economic interest stems from the fact that she has a direct interest in Mr. Hubbard's assets which are threatened by Plaintiff Flynn's request for damages in the amount of \$141 million dollars. Second, the Complaint specifically alleges that Mrs. Hubbard acted as Mr. Hubbard's agent in perpetrating the alleged tortious acts hence she has an interest in defending her reputation by showing the allegations to be false. This is particularly so since Mrs. Hubbard's position within the Church of Scientology for

much of the period alleged in the complaint makes her a central figure in Flynn's allegations. See Declaration of Mary Sue Hubbard, ¶'s 15-25.

1. Mrs. Hubbard Has An Economic Interest
In The Outcome Of This Lawsuit

Mrs. Hubbard, as defendant L. Ron Hubbard's wife for over thirty years, has not only a strong emotional commitment to the well-being and good name of her husband, but also a direct and personal interest in his economic affairs. She is almost wholly dependent on her husband for her financial support and maintenance. Declaration of Mary Sue Hubbard, ¶5. Further, she is a primary personal legatee of her husband's will, and consequently has a direct interest in a significant portion of her husband's estate. Declaration of Mary Sue Hubbard, ¶6. A depletion or diminution of her husband's assets and estate would have a direct and profound impact on Mrs. Hubbard -- immediately, by reducing, if not destroying, her husband's ability to support her, and ultimately, by depriving her of her inheritance. Hence, the outcome of this lawsuit will affect the funds which are the source of her current and her future livelihood.

Mrs. Hubbard's interest in maintaining the assets which provide for her support and which, upon her spouse's death, will vest in her is identical to the interest justifying intervention as of right in the recent case S.E.C. v. Flight Transportation Corp., 699 F.2d 943 (8th Cir. 1983).

This case was an enforcement proceeding by the SEC

which named as a defendant William Rubin, the President, Chairman of the Board of Directors and chief executive officer of Flight Transportation Corp. ("FTC"). The SEC sought to freeze Rubin's assets and to obtain both an accounting of all funds received by him from FTC and a disgorgement of these funds.

Rubin's wife sought to intervene in the action. She had initiated a divorce proceeding which sought a division of the marital property and the marital property included the disputed funds received by Rubin from FTC. The District Court denied intervention but was reversed on appeal. The Court of Appeals found it "irrelevant" that under state law the wife had no "vested" interest in the marital property and held that she had a "significantly protectable interest" in the litigation. 699 F.2d at 949. Thus, she was permitted to intervene and to participate in the litigation of the merits of SEC's claims in order to protect her interest in assets that might be depleted or diminished by an adverse judgment.

Mrs. Hubbard similarly has an interest to defend against a ruling adverse to her husband which would have a serious impact on his personal assets. Mrs. Hubbard's interest in these assets is just as substantial and protectable as those of Mrs. Rubin. Indeed, her interest in Mr. Hubbard's estate is identical to Mrs. Rubin's interest in a distribution of marital property; both interests are in funds that will be distributed upon one of the two events (divorce or death) which cause a distribution of assets from a marriage.

The case Johnson v. Lee, 460 F.2d 1053 (5th Cir.

1972) also involved an intervenor that had an economic interest in whether or not the plaintiff was entitled to damages from the defendant. In Johnson, a workers compensation insurance carrier was permitted to intervene in a tort action brought by the workers compensation claimant against the tortfeasor. The insurance carrier had no interest in the tort action itself. Its only interest was in the monetary recovery, if any, obtained by the plaintiff. The carrier's right to reimbursement and subrogation were considered a sufficient interest to permit intervention. Here, Mrs. Hubbard similarly has an interest in the monetary recovery by the plaintiff in a tort action. Her interest in avoiding recovery by the plaintiff is the reverse size of the coin of the insurance carrier's interest in establishing tort liability in order to obtain its share of the recovery.

Mrs. Hubbard's interest in receiving continued support payments from her husband is also highly analogous to the intervenor's interest in Decker v. United States Department of Labor, 473 F.Supp. 770 (E.D. Wis. 1979). The Court in Decker permitted the Archdiocese of Milwaukee to intervene as a defendant in a lawsuit which challenged the constitutionality of providing CETA grants or contracts to parochial institutions. The Court held that the Archdiocese had "a direct interest in continued receipt of CETA funds, which interest is threatened by this litigation." 473 F.Supp. at 773. The Archdiocese was permitted to intervene of right in the litigation of the merits of the case in order to protect, as Mrs. Hubbard seeks to do here, its continued receipt of

funds.

Other circuit courts have recognized an intervention movant's interests solely in the outcome of the lawsuit as being sufficient under Rule 24(a)(2). One leading case is New York Public Interest Research Group, Inc. v. Regents of the University of the State of New York, 516 F.2d 350, 351-52 (2nd Cir. 1975) in which the Pharmaceutical Society of the State of New York and three individual pharmacists sought to intervene in a consumer lawsuit seeking to enjoin the enforcement of regulations promulgated by the Regents which prohibited the advertising of the price of prescription drugs. The court recognized that the pharmacists had an economic interest in the outcome of the lawsuit, i.e., whether the regulations would be upheld. Mrs. Hubbard similarly has a direct economic interest in whether the alleged tortious acts are found to have occurred and to have damaged Flynn.

Similarly, in Natural Resources Defense Council v. United States Nuclear Regulatory Comm., 578 F.2d 1341 (10th Cir. 1978), two mining companies were permitted to intervene in an action brought to prohibit the issuance of a license for operation of an uranium mill to third mining company. The court held that the intervenor companies had an interest in the outcome of the lawsuit because it would affect their ability to secure licenses in the future. In so holding, the court remarked that "[s]trictly to require that the movant in intervention have a direct interest in the outcome of the lawsuit strikes as being too narrow a construction of Rule 24(a)(2)," (emphasis in original) 528 F.2d at 1344.

See also CRI, Inc. v. Watson, 608 F.2d 1137, 1140 (8th Cir. 1979) (applicant for intervention had no interest in the contract being litigated but was permitted to intervene because his recovery of a finder's fee was affected by the outcome of the lawsuit since it was contingent upon a finding that the contract had been performed by CRI); Finch v. Mississippi State Medical Assn, Inc., 585 F.2d 765, 779-80 (5th Cir. 1978) (held that plaintiffs challenging statutory method for selecting members of Mississippi State Board of Health were doctors and hence only had standing to sue the Medical Association but in dicta stated that the other associations that similarly had statutory power to nominate candidates for appointment to the Board have "an interest in the outcome of this action" and hence, if so inclined, should be granted leave to intervene as defendants); and Joseph Skillen & Co. v. City of Toledo, 528 F.2d 867 (6th Cir. 1975) (neighboring land owners found to have a direct and substantial interest in a lawsuit seeking to rezone a piece of property to permit the construction of low-income housing units).

2. Mrs. Hubbard Has An Interest to Protect Her Reputation Which Is Placed In Question By The Allegation In The Complaint

Mary Sue Hubbard's own reputation has been called into question by the complaint in this action.

Though Mr. Hubbard is the sole defendant named in this lawsuit, the complaint names and implicates Mrs. Hubbard as a key individual who knowingly participated in the alleged

conspiracy to "destroy" the Plaintiff. The complaint names and implicates Mrs. Hubbard as one of the central agents who implemented the conspiracy. It also alleges that the conspiracy was carried out by the Guardian's Office of the Church of Scientology during a time when Mrs. Hubbard supervised and was responsible for the activities of this office. Declaration of Mary Sue Hubbard, ¶'s 15-25.

Mrs. Hubbard's reputation is grievously maligned by the complaint because the acts attributed to her and the Guardian's Office are of a particularly odious and criminal nature. Mr. Flynn alleges that she conspired to murder him, to steal documents from his offices, to frame him on criminal charges, to poison him, to kidnap his clients, to file false charges with the Massachusetts State Bar, to conduct illegal electronic surveillance upon him, to make obscene phone calls to his neighbors, to send him a bomb threat and to defame him. Complaint, ¶'s 13 and 37.

Mrs. Hubbard's interest in protecting her reputation has been made even more paramount by the fact that the Plaintiff Flynn has taken it upon himself to publish the complaint by distributing copies to the news media. Declaration of Mary Sue Hubbard, ¶27. Since the complaint names Mrs. Hubbard as an active participant in tortious activities, Plaintiff's publication of the complaint has directly placed Mrs. Hubbard's reputation in question.

Finally, as Plaintiff Flynn is well aware, Mrs. Hubbard's husband is unlikely to appear in this action to defend against the allegations. Mr. Hubbard has been in

complete seclusion since March of 1980. He has been named as a defendant in over a dozen lawsuits in which the Plaintiff serves as an attorney or is in some type of cooperative association with other attorneys. Mr. Hubbard also was the subject of an unsuccessful attempt to be declared a missing person whose estate was in need of court supervision by his son by a former marriage who was represented by Plaintiff Flynn. Mr. Hubbard has not appeared in any of these actions. Declaration of Mary Sue Hubbard, ¶'s 9-14.

If Mr. Hubbard fails to appear, Plaintiff will undoubtedly seek a default without ever being required to establish the truth of these published allegations. Such a default would further harm Mrs. Hubbard's reputation because the default and the execution of a substantial judgment will appear to confirm the allegations that Mrs. Hubbard was engaged in tortious activities.

Mrs. Hubbard's interest in protecting her reputation by defending against the allegations in the complaint is sufficient to invoke Rule 24(a)(2). The Supreme Court has held that injury to reputation is a protectable interest and can serve as the basis for standing to sue. Joint Anti-Facist Refugee Committee v. McGrath, 341 U.S. 123, 71 S.Ct. 624, 95 L.Ed 817 (1951); Jenkins v. McKeithen, 395 U.S. 411, 422, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969). See also Southern Mutual Help Assn, Inc. v. Califano, 574 F.2d 518, 524 (D.C. Cir. 1977); and United States v. Briggs, 514 F.2d 794, 797-99 (5th Cir. 1975). It also has been recognized that movants that meet the Article III requirement of demonstrating a stake in the

outcome of the lawsuit "necessarily possess the interest required to support intervention under Fed.R.Civ.P. 24." Legal Aid Society of Alameda County v. Brennan, 608 F.2d 1319, 1328 n. 9 (9th Cir. 1979).

The Jenkins v. McKeithen case is highly instructive. The plaintiff sought to enjoin an investigation of his conduct by a state commission which had been created to inquire into criminal conduct in labor-management relations. The plaintiff claimed that the commission in essence was conducting public trials designed to find persons like him guilty of violating criminal laws, yet he had been denied the procedural safeguards normally accorded criminal trials. The court held that the plaintiff had standing to challenge the commission's procedures stating:

"[It] is alleged that the very purpose of the Commission is to find persons guilty of violating criminal laws without trial or procedural safeguards, and to publicize those findings. Moreover, we think that the personal and economic consequences alleged to flow from such actions are sufficient to meet the requirement that appellant prove a legally redressable injury" 395 U.S. at 422.

In Jenkins v. McKeithen, the state commission was making criminal charges in a proceeding in which the person being charged could not appear to defend against the charges. Here, the complaint filed by Plaintiff Flynn charges Mrs. Hubbard with not only tortious but criminal conduct and Plaintiff presumably intends to place her conduct on trial. However, absent intervention, Mrs. Hubbard, like Mr. Jenkins, will have these criminal charges litigated without being

afforded an opportunity to protect her reputation by rebutting the charges. Like Mr. Jenkins, Mrs. Hubbard has a sufficient interest in protecting her reputation to permit her to be heard.

Also, the Fifth Circuit in United States v. Briggs, 514 F.2d 794, 797-99 (5th Cir. 1975) held that the mere naming of individuals in a complaint can damage their reputations and provide a sufficient interest for the individuals to bring an action seeking to have their names expunged. The petitioners in Briggs were unindicted co-conspirators named in a federal indictment. The court went on to hold that expungement was proper because their interest in their reputations outweighed any governmental interest in identifying the co-conspirators by name in the indictment. 514 F.2d at 806.

Mrs. Hubbard's interest in her reputation is one that is "protectable." If permitted to intervene, her interest can be protected because she will be in a position to defend against the damaging allegations and to minimize the damage from Mr. Flynn's publication of the allegations by prevailing on the merits.

B. The Disposition Of This Action Will, As
A Practical Matter, Impair Mrs. Hubbard's
Interests

Rule 24(a)(2) also requires a showing that there is a possibility that the disposition of the lawsuit may impair or impede, as a practical matter, the applicant's ability to protect his or her interest. This requirement was interpreted

by the Tenth Circuit in Natural Resources Defense Council v. United States Nuclear Regulatory Comm., 578 F.2d 1341, 1345 (10th Cir. 1978) as follows:

"It should be pointed out that the Rule refers to impairment 'as a practical matter.' Thus, the court is not limited to consequences of a strictly legal nature. The Court may consider any significant legal effect in the applicant's interest"

A judgment in favor of the Plaintiff in this action would have serious legal effects on Mrs. Hubbard's interests. With respect to her interest in her husband's assets, a judgment would permit Plaintiff Flynn to obtain a writ of execution which could be used to execute on these assets. Mrs. Hubbard would have no legal recourse to resist the writ of execution. Hence, the judgment would have a binding legal effect on her interest in the assets being subjected to execution.

Also, a judgment would cause Mrs. Hubbard's reputation to be irreparably harmed because even a default judgment against Mr. Hubbard can be interpreted by the public as sustaining the allegations in the complaint which charge Mrs. Hubbard with wrongdoing. Absent intervention, Mrs. Hubbard will be deprived of the opportunity to defend against these allegations and thereby avoid additional damage to her reputation.

C. It Is Highly Unlikely That Mrs. Hubbard's
Interests Will Be Represented Absent
Intervention

The final requirement under Rule 24(a)(2) is a showing that the representation of the applicant's interest by the parties may be inadequate. In Trobovich v. United Mine Workers, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972), the Supreme Court held that this requirement is satisfied "if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal."

This requirement clearly is met where there is no party in the lawsuit who will protect the movant's interests. See Stallworth v. Monsanto Co., 558 F.2d 257, 268 (5th Cir. 1977) (white employees sought to intervene in an employment discrimination lawsuit to defend their interests in the defendant's seniority system; the court held that since neither party has voiced the movants' concerns or expressed a desire to do so, their interests are not adequately represented); Liddell v. Caldwell, 546 F.2d 768, 771-74 (8th Cir. 1976), cert. denied, 433 U.S. 914 (1977) (held representation to be inadequate where movant sought to object to and appeal consent decree entered into by existing parties); and Decker v. United States Department of Labor, 473 F.Supp. 770, 773 (E.D. Wis. 1979).

It is highly likely that the sole defendant in this action will not appear to defend against the allegations. Mr. Hubbard has been in seclusion of more than three years and

over this time consistently has failed to make an appearance in a multitude of lawsuits in which he has been named as a defendant. Declaration of Mary Sue Hubbard, ¶'s 9-15. Indeed, Plaintiff Flynn admits this likelihood in a document recently filed in this action entitled Motion to Strike Letter Dated September 14, 1982. Plaintiff Flynn recites his own knowledge of Mr. Hubbard's failure to appear in other cases and concludes that it "is speculation at this point that Mr. Hubbard will even appear in this lawsuit." These facts are sufficient to establish that representation of Mrs. Hubbard's interest "may be" inadequate.

II

PERMISSIVE INTERVENTION

In the alternative, Mrs. Hubbard should be granted permissive intervention. The factors governing permissive intervention are stated in Rule 24(b) as follows:

"(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a condition right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the

rights of the original parties."

The threshold requirement for permissive intervention is that the applicant have a claim or defense which involves a question of law or fact which also must be resolved in the main action. Wade v. Goldschmidt, 673 F.2d 182 (7th Cir. 1982). The existence of a common question permits the Court to exercise its discretion which is based on its assessment of whether intervention will unduly delay or unduly prejudice the adjudication of the rights of the original parties.

Here, Mrs. Hubbard seeks permissive intervention in order to assert a defense to the allegations in the complaint. Since she seeks to intervene to defend against specific allegations in the complaint, there can be no question that common questions of fact and law will be involved.

The identical situation was presented in the case Holcomb v. Aetna Life Insurance Co., 255 F.2d 577 (10th Cir. 1958). The lawsuit was action in interpleader brought by Aetna. Two sets of parties were seeking funds from Aetna: the beneficiaries of an annuity contract entered into by a deceased person and the heirs of the deceased who sought a return of the premiums paid on the contract alleging that the deceased had been fraudulently induced by Aetna and others to enter into the annuity contract. Permissive intervention was granted to the persons named by the heirs as participating with Aetna in the fraud and conversion of the deceased funds. The court held that intervention was proper because "the question of whether or not there had been a conversion of Mrs. Rettenmeyer's bonds

by them was governed by the same facts and law determining Aetna's liability." 255 F.2d at 582. Hence, they were allowed to intervene in order to defend against the allegations of their wrongdoing.

There are other cases where permissive intervention has been permitted to enable intervenors to assert defenses to allegations in the complaint even though they have not been named as defendants. In Stewart-Warner Corp v. Westinghouse Elec. Corp., 325 F.2d 822, 825 (2nd Cir. 1963), cert. denied, 376 U.S. 944 (1964), a subsidiary of the defendant was permitted to intervene in a patent infringement case brought against the parent corporation even though its proposed answer was "substantially the same as Westinghouse's answer."

Similarly, in Pace v. First Nat. Bank of Osawatomie, Kansas, 277 F.Supp. 19 (D. Kan. 1965), intervention was permitted when the applicant sought to intervene as a defendant and to assert the same defense which already had been advanced by the defendant bank.

Since the threshold requirement of common questions is met, the only remaining question is whether intervention will result in undue delay or undue prejudice. It is recognized that the addition of a party will always result in some delay. Philadelphia Elec. Co. v. Westinghouse Elec. Corp., 308 F.2d 856, 860 (3rd Cir. 1962), cert. denied, 372 U.S. 936 (1963). However, in determining whether the delay is undue, it must be balanced against the judicial economy of disposing of all related defenses in one lawsuit.

International Tank Terminals, Inc. v. M/V Acadia Forest, 579

F.2d 964 (5th Cir. 1978); Pace v. First Nat. Bank of Osawatpomie, Kansas, 277 F.Supp. at 20.

Here, there can be no legitimate claim of delay or prejudice caused by Mrs. Hubbard's intervention to oppose the Plaintiff's allegations. Mrs. Hubbard is seeking intervention at the very initiation of this lawsuit. By defending against the allegations of wrongdoing in the complaint, she would be doing no more than the Plaintiff should expect upon the filing of his lawsuit.

Furthermore, the existence of counterclaims against Plaintiff Flynn is a factor which argues in favor of permissive intervention.^{1/} Absent intervention, these claims will be filed in federal court in a separate action with Michael Flynn named as the sole defendant. Judicial economy would be advanced by the litigation of these claims in conjunction with the existing complaint because there are substantial common questions of law and fact that must be resolved. In fact, the underlying complaint and the counterclaim are mirror images in that the thrust of each is alleged tortious conduct by the other side in the course of Mr. Flynn's "Scientology litigation."

^{1/} However, should the Court determine that the counterclaims would cause undue delay, it is submitted that intervention could then be limited to Mrs. Hubbard's interest in asserting a defense to the underlying complaint. See Wright & Miller, Federal Practice and Procedure: Civil §1921, p. 618.

For example, a central factual defense to Mr. Flynn's lawsuit will be not only that the allegations in the complaint are false but also that Mr. Flynn's factual averments and characterizations are not worthy of any credibility because the whole underlying complaint is a sham and a litigation tactic to obtain a default judgment against Mr. Hubbard, and that the underlying complaint is simply the latest phase of a whole coordinated plan designed to extract a rapid financial recovery Mr. Flynn's "Scientology litigation." Highly relevant to this defense is the fact that Plaintiff Flynn quite recently instituted and lost a similar sham proceeding in the California courts which sought to have L. Ron Hubbard's estate administered by his estranged son by a prior marriage, based on the trumped up charge that Mr. Hubbard was a missing person. In filing both the California action and the instant lawsuit, Mr. Flynn relied on the likelihood that Mr. Hubbard would not come forward to protect his interests. This same showing establishes that the California action constituted malicious prosecution and an abuse of the court process, causes of action alleged in the counterclaim. Mrs. Hubbard, who was forced to take on the burden of having the California action dismissed, affirmatively alleges these malicious prosecution and abuse of process causes of action as counterclaims.

In defending against the Plaintiff's complaint, Mrs. Hubbard also will establish that the allegations of wrongdoing are false. This same showing is highly relevant to the other two counterclaims asserted by Mrs. Hubbard: one alleging that Mr. Flynn's publication of the complaint to the

press constituted libel; and the other alleging that the lawsuit, being based on a sham pleading brought to obtain a default judgment, is an abuse of process. For both of these counterclaims, the truth or falsity of the allegations in the Plaintiff's complaint in the underlying action must be litigated.

Since the counterclaims are factually related to the movant's intended defense to the original complaint, there are judicial economies that outweigh any delay caused by litigating the counterclaims. This principle was followed in Stewart-Warner Corp. v. Westinghouse Elec. Corp., 325 F.2d 822 (2nd Cir. 1963), cert. denied, 376 U.S. 944 (1964), where a subsidiary of the defendant corporation was permitted to intervene in a patent infringement case and to assert unfair competition claims against the plaintiff. The Court found that even though the affirmative defenses and counterclaims asserted by the intervenor enlarged the field of litigation, there were substantial judicial economies in having a single judge resolve all the disputes which inevitably will require resolution. 325 F.2d at 826-27. See also Switzer Bros., Inc. v. Locklin, 207 F.2d 483 (7th Cir. 1953).

The Stewart-Warner case involved a much greater enlargement of the field of litigation than would result from the counterclaims asserted by Mrs. Hubbard. The unfair competition claims in Stewart-Warner were related to the patent infringement claims only because the same patented devices were involved in both causes of action. Here, in contrast, the very facts which must be shown to establish the counterclaims - the

truth of the allegations in the underlying complaint, the Plaintiff's motivation in making his allegations in the underlying complaint, and whether the Plaintiff had previously filed an abusive and malicious pleading in the California probate action - are facts that also are relevant to and will be litigated in Mrs. Hubbard's defense to the Plaintiff's complaint. Hence, the potential for delay in the instant case is much less than that in Stewart-Warner, and the judicial economies are even greater.

CONCLUSION

For the reasons stated above, it is respectfully submitted that movant Mary Sue Hubbard should be allowed to intervene to defend against the allegations in this lawsuit and to assert her counterclaims against Plaintiff Michael Flynn.

DATED: September 30, 1983 Respectfully submitted,

BARRETT S. LITT
MICHAEL S. MAGNUSON
LAW OFFICES OF BARRETT S. LITT
617 South Olive Street
Suite 1000
Los Angeles, California 90014
(213) 623-7511

HARVEY SILVERGLATE
DAVID J. FINE
SILVERGLATE, GERTNER, BAKER &
FINE
88 Broad Street
Boston, Massachusetts 02110
(617) 542-6663

Attorneys for Applicant
Mary Sue Hubbard

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MASSACHUSETTS

MICHAEL J. FLYNN,

Plaintiff,

vs.

LAFAYETTE RONALD HUBBARD

a/k/a L. RON HUBBARD,

Defendant,

AND

MARY SUE HUBBARD,

Intervenor-Defendant)

CIVIL ACTION NO.

83-2642-C

ANSWER AND COUNTERCLAIM OF

MARY SUE HUBBARD, INTERVENOR-
DEFENDANT

Intervenor-Defendant, MARY SUE HUBBARD, by her attorney,
hereby answers plaintiff's complaint as follows:

1. Admits the allegations of paragraph 1.
2. Denies the allegations of paragraph 2, except admits that L. Ron Hubbard has stated that he desires his present whereabouts to be unknown, and that they are in fact unknown to the plaintiff.
3. Denies the allegations of paragraph 3.
4. Denies the allegations set forth in the introductory section of paragraph 4.

(a) Denies the allegations of paragraph 4(a), except admits that Mr. Hubbard wrote the two books mentioned and that the copyrights are held in his name, and admits that the two books are available for sale in the four states alleged, and lacks knowledge or information sufficient to form a belief as to

the truth of the averments as to the manner, if any, in which Mr. Hubbard receives income from the sale of said publications.

(b) Denies the allegations of paragraph 4(b).

(c) Denies the allegations of paragraph 4(c), except admits that the copyright for any books written by Mr. Hubbard are held in his name, and lacks knowledge or information sufficient to form a belief as to the truth of the averments as to the annual gross income derived from the sale of such books.

(d) Denies the allegations of paragraph 4(d), except admits that Mr. Hubbard has assigned certain rights with respect to certain trade marks to RTC.

(e) Denies the allegations of paragraph 4(e).

5. Denies the allegations of paragraph 5, except admits that L. Ron Hubbard is the founder of the religion of Scientology.

6. Denies the allegations of paragraph 6.

7. Denies the allegations of paragraph 7.

8. Denies the allegations of paragraph 8.

9. Denies the allegations of paragraph 9, except lacks knowledge or information sufficient to form a belief as to the truth of the averments as to what is in plaintiff's possession.

10. Denies the allegations of paragraph 10.

11. Denies the allegations of paragraph 11.

12. Denies the allegations of paragraph 12.

13. Denies the allegations in paragraph 13.

14. Denies the allegations of paragraph 14, except admits that plaintiff undertook the legal representations of Van

Schaick, and that plaintiff wrote a letter requesting a refund for her in the amount of \$12,896.75.

15. Denies the allegations of paragraph 15.

16. Denies the allegations of paragraph 16, except admits that the Church of Scientology of Boston sent a letter to plaintiff dated September 11, 1979, offering to pay plaintiff's client, Van Schaick, a \$6,268 refund (which amount was raised by negotiation between counsel for the parties to \$8,594.04), and pointing out that Van Schaick had signed an agreement never to sue Scientology or Mr. or Mrs. Hubbard; and further except that intervenor-defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments as to what phone calls plaintiff received from his clients, relatives and friends (if any), or the nature of plaintiff's relationship with Phillis Sequeira.

17. Denies the allegations of paragraph 17, except lacks knowledge or information sufficient to form a belief as to the truth of the averments as to what anonymous telephone calls plaintiff received.

18. Defendant-Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments of ¶18, except denies that any of the acts alleged were performed by individuals acting on orders from Mr. Hubbard.

19. Defendant-Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments of

¶19, except denies that water balloons were placed in the tanks of plaintiff's airplane by "agents of the G.O., on orders of Mr. Hubbard."

20. Denies the allegation of paragraph 20, except admits that Van Schaick has made such claims against the Church of Scientology of California in another lawsuit presently pending before this court, which claims have been denied, and further admits that the Church of Scientology of California, not Mr. Hubbard, sent Gary Klingler to speak to Van Schaick in an attempt to reassure her that the Church was not engaged in any acts against her.

21. Denies the allegations of paragraph 21, except admits that nine then staff members or officials of the Church of Scientology of California, including the intervenor-defendant, were, on a limited stipulated record of the evidence which the government claimed it would introduce (the truth of which record was not stipulated to), each found guilty of a single count of the indictment, and further admits that various documents were improperly released by the district court in that case, until the United States Court of Appeals for the District of Columbia Circuit reversed the district court's order on the grounds that it violated the privacy rights of the Church of Scientology of California and its members.

22. Defendant-Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments of

¶22, except admits that plaintiff brought a lawsuit on behalf of Van Schaick, naming as defendants not only the Church of Scientology of California, but also L. Ron Hubbard.

23. Denies the allegations of paragraph 23.

24. Denies the allegations of paragraph 24, except admits that the Church of Scientology of Nevada filed an action in federal court entitled Church of Scientology of Nevada, et al. v. La Venda Van Schaick, et al., Civil LV 80-10 EHL, which did not name the plaintiff as a defendant. The action ultimately was dismissed on the ground that the federal court lacked subject matter jurisdiction over the action. A state court action subsequently was filed against some but not all of the defendants in the federal action and, upon information and belief, is still pending.

25. Denies the allegations of paragraph 25, except (1) admits that the President of the Church of Scientology of Boston filed a complaint against the plaintiff with the Massachusetts Board of Bar Overseers on January 15, 1980; (2) further admits that the President of the Boston Church filed supplements to his bar complaint on February 7, 1980 and April 3, 1980; (3) further admits that the Assistant Bar Counsel of the Massachusetts Board of Bar Overseers recommended no action be taken on the basis of said complaint; (4) further admits that the President of the Boston Church filed a new bar complaint against the plaintiff on November 19, 1980; and (5) further admits that the Assistant Bar Counsel of the Massachusetts Board of Bar Overseers also declined to take action on the second bar complaint. As to the contents

of said bar complaints and supplements, defendant-intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments.

26. Denies the allegations of paragraph 26, except admits that in May, 1980, the Church of Scientology of Nevada filed a state court action against various individuals, not including the plaintiff, admits that said action was dismissed as against Kevin Flynn for lack of personal jurisdiction, and avers that said action is still otherwise pending.

27. Denies the allegations of paragraph 27, except admits that the Church of Scientology of Boston filed the action referred to against the plaintiff and four others. The complaint alleged that the four other individuals had stolen documents from the Church of Scientology of Boston and had turned them over to the plaintiff for use in lawsuits against the Church of Scientology of Boston. On April 11, 1980, the Massachusetts Superior Court issued a preliminary injunction prohibiting the plaintiff herein to return certain documents to the Church of Scientology of Boston, further requiring him to lodge certain other documents with the court for safekeeping, and further enjoining the plaintiff from using the remaining documents except in limited circumstances and upon notice to the Church of Boston.

28. Denies the allegations of paragraph 28, except admits that the Church of Scientology of Nevada, Inc. and Charles Orr, President of that Church, filed the action referred to against plaintiff in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, avers that the basis for

the complaint is set forth therein, and avers that the plaintiff's motion to quash service of process was granted on the grounds that the court lacked personal jurisdiction over plaintiff.

29. Denies the allegations in paragraph 29.

30. Denies the allegations in paragraph 30, except admits that Mr. Tighe and Warren Friske lawfully retrieved various items from the plaintiff's abandoned trash between 1979 and 1981.

31. Defendant-Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments of ¶31, and avers that said allegations constitute legal characterizations of the nature of certain items, and as such should be stricken. Intervenor-defendant denies the characterization of said items.

32. Denies the allegations of paragraph 32.

33. Denies the allegations of paragraph 33, except admits that plaintiff filed the suit on behalf of Tonja Burden in the case referred to therein. Intervenor-defendant avers that the remainder of the allegations of paragraph 33 constitute opinion and conclusions, and should be stricken, and denies their characterization by Plaintiff.

34. Denies the allegations of paragraph 34, except admits that plaintiff's deposition was taken by attorneys representing various churches of Scientology, or Scientologists, on six occasions, of which four were well after the time period referred to and avers that the term "his employees and colleagues" is so vague that it is impossible to obtain knowledge or information

sufficient to affirm or deny the allegation insofar as it relates to such individuals.

35. Denies the allegations of paragraph 35, except admits that plaintiff met with Jay Roth, an attorney representing and retained by the Church of Scientology of California, in February 1981, to discuss settlement of various cases which plaintiff had brought or threatened to bring against various churches of Scientology. At that meeting, plaintiff gave to Mr. Roth the "analysis" referred to in paragraph 35 of the complaint.

36. Defendant-Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments of ¶36, except denies the allegation that any documents were stolen or taken in any way from plaintiff's office.

37. Defendant-Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments as to the nature of the conference referred to in paragraph 37, and denies all other allegations of said paragraph.

38. Denies the allegations of paragraph 38.

39. Denies the allegations of paragraph 39, except admits that the Church of Scientology of California was aware that plaintiff was considering the commencement of various lawsuits against Churches of Scientology, since Mr. Flynn threatened to do so in an attempt to coerce the Church into a large settlement on behalf of Mr. Flynn and his clients.

40. Denies the allegations of paragraph 40, except admits that the City of Clearwater, Florida, hired plaintiff for the improper purpose of ridding Clearwater of Scientology.

41. Denies the allegations of paragraph 41, except lacks knowledge or information sufficient to form a belief as to the truth of the averments as to whether plaintiff expended \$200,000 to finance litigation on behalf of his contingency fee clients, and further avers that it was plaintiff who wrote a letter to Mr. Roth suggesting a settlement of all litigation against the Church, including cases not brought, for the sum of \$1.6 million dollars, and threatening to bring massive additional litigation if the settlement offer was not accepted.

42. Denies the allegations of paragraph 42, and further avers that the allegations are too vague as to time period and content to permit an informed response.

43. Denies the allegations of paragraph 43.

44. Denies the allegations of paragraph 44, and further avers that Scientology organizations and individuals have taken necessary, appropriate and legal steps to defend themselves against the outrageous legal, public relations, and media campaign led and orchestrated by plaintiff over the past several years, and that, where necessary, such defense has included efforts to demonstrate to the public, the media, and the courts the true nature of plaintiff and his unholy campaign.

45. Denies the allegations of paragraph 45, except admits that Harvey Silverglate wrote a letter to the Bar Counsel of the Massachusetts Board of Bar Overseers in August 1981.

46. Denies the allegations of paragraph 46, except admits that Mr. Silverglate filed three separate bar complaints in November, 1981, which are still pending.

47. Denies the allegations of paragraph 47, except admits that Steven Miller brought the action referred to in an effort to redeem and protect his civil rights.

48. Denies the allegations of paragraph 48, except admits that Ellen and Chris Garrison brought the action referred to in an effort to protect and redeem their civil rights.

49. Denies the allegations of paragraph 49, except admits that motions to disqualify the plaintiff as counsel were filed by the Church of Scientology of California in the Garrity and Burden cases.

50. Denies the allegations of paragraph 50, and avers that the allegations are a mere statement of opinion which have no place in a properly drafted legal complaint and should be stricken, and denies their characterization by Plaintiff.

51. Denies the allegations of paragraph 51.

52. Denies the allegations of paragraph 52.

53. Denies the allegations of paragraph 53, except (1) lacks knowledge or information sufficient to form a belief as to the truth of the averments as to the number of hours plaintiff spent on any matter, (2) admits that the Church of Scientology of California filed an abuse of process action in California, which was dismissed with leave to amend the complaint, (3) admits that an amended complaint was filed in the abuse of process action, which amended complaint was also dismissed, (4) avers further that the dismissal of the amended abuse of process action was appealed by the Church of Scientology of California, and that said appeal is still pending, and (5) admits that the Flag

Service Organization, Inc. filed an action against the City of Clearwater and the plaintiff to prevent the City and plaintiff, its retained special counsel, from conducting a constitutionally improper public inquiry into the nature of the beliefs and practices of Scientology.

54. Denies the allegations of paragraph 54, except admits the allegation of ¶54(b) that plaintiff was held in criminal contempt of court by the Volusia County, Florida, Superior Court in Cazares v. Church of Scientology of California, Inc., Civil #81-3472-CA 01.

55. Denies the allegations of paragraph 55.

56. Denies the allegations of paragraph 56.

57. Repeats and realleges the denials and averments of paragraphs 1-56 above as if fully set forth herein.

58. Denies the allegations of paragraph 58, including the allegations contained in all of the subparagraphs thereof.

59. Denies the allegations of paragraph 59, which is misnumbered as paragraph 57 on page 54 of the complaint.

60. Repeats and realleges the denials and averments of paragraph 1-59 above as if fully set forth herein.

61. Denies the allegations of paragraph 61.

62. Denies the allegations of paragraph 62.

63. Denies the allegations of paragraph 63.

64. Repeats and realleges the denials and averments of paragraph 1-63 above as if fully set forth herein.

65. Denies the allegations of paragraph 65.

66. Denies the allegations of paragraph 66.
67. Denies the allegations of paragraph 67.
68. Repeats and realleges the denials and averments of paragraphs 1-67 above as if fully set forth herein.
69. Denies the allegations of paragraph 69.
70. Denies the allegations of paragraph 70.
71. Repeats and realleges the denials and averments of paragraph 1-70 above as if fully set forth herein.
72. Denies the allegations of paragraph 72.
73. Denies the allegations of paragraph 73.
74. Denies the allegations of paragraph 74.
75. Repeats and realleges the denials and averments of paragraphs 1-74 above as if fully set forth herein.
76. Denies the allegations of paragraph 76.
77. Denies the allegations of paragraph 77.
78. Repeats and realleges the denial and averments of paragraphs 1-77 above as if fully set forth herein.
79. Denies the allegations of paragraph 79.
80. Denies the allegations of paragraph 80.
81. Denies the allegations of paragraph 81.
82. Denies the allegations of paragraph 82.
83. Repeats and realleges the denials and averments of paragraph 1-82 above as if fully set forth herein.
84. Denies the allegations of paragraph 84, and refers the Court to the provisions of M.G.L. ch. 214 §1(b), for the precise scope of said statute.

85. Denies the allegations of paragraph 85.

86. Denies the allegations of paragraph 86.

87. Repeats and realleges the denials and averments of paragraphs 1-86 above as if fully set forth herein.

88. Denies the allegations of paragraph 88, except admits that one of the parties, i.e., the plaintiff, is engaged in trade within the meaning of Mass. G.L.c. 93A.

89. Denies the allegations of paragraph 89.

90. Denies the allegations of paragraph 90.

91. Repeats and realleges the denials and averments of paragraphs 1-91 above as if fully set forth herein.

92. Denies the allegations of paragraph 92.

93. Denies the allegations of paragraph 93.

94. Repeats and realleges the denials and averments of paragraphs 1-93 above as if fully set forth herein.

95. Denies the allegations of paragraph 95, except admits that 18 U.S.C. §1964(c) contains provisions relating to damages, and refers the Court to the contents of said statute for its exact scope and language.

96. Denies the allegations of paragraph 96, except admits that 18 U.S.C. §1962 makes unlawful certain activities, and refers the Court to said statute for its exact scope and language.

97. Denies the allegations of paragraph 97.

98. Denies the allegations of paragraph 98, except admits that 18 U.S.C. §1961 defines the term "racketeering activity" as

used in Chapter 96 of the United States Code of Crimes and Criminal Procedures, and refers the Court to said statute for its exact scope and language.

99. Denies the allegations of paragraph 99, except admits that L. Ron Hubbard was the founder of the religion of Scientology.

100. Denies the allegations of paragraph 100.

101. Denies the allegations of paragraph 101.

102. Denies the allegations of paragraph 102, except admits that the Churches of Scientology hold themselves out to the public and are, in fact, legitimate, law-abiding, religious non-profit institutions.

103. Denies the allegations of paragraph 103.

104. Denies the allegations of paragraph 104.

105. Denies the allegations of paragraph 105.

106. Denies the allegations of paragraph 106.

107. Denies the allegations of paragraph 107.

108. Denies the allegations of paragraph 108.

109. Denies the allegations of paragraph 109.

110. Denies the allegations of paragraph 110.

Intervenor-Defendant also denies the unnumbered claims for damages contained in the complaint.

AFFIRMATIVE DEFENSES

In further answer and defense of plaintiff's claims, Intervenor-Defendant asserts the following Affirmative Defenses,

without waiving and and specifically reserving her position that the burden of proof for each of these enumerated defenses actually rests with plaintiff.

FIRST AFFIRMATIVE DEFENSE

This court lacks subject matter jurisdiction over the instant suit.

SECOND AFFIRMATIVE DEFENSE

The complaint fails to state facts sufficient to constitute a cause of action or claim for relief.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches and estoppel.

FIFTH AFFIRMATIVE DEFENSE

On April 9, 1982, plaintiff commenced an action in the Superior Court of Massachusetts, Civil Action No. 54258, alleging substantially identical claims to those set forth in the complaint herein. Said action is now pending and not decided. The present action, therefore, constitutes duplicative litigation and the splitting of a cause of action. Plaintiff must be barred from proceeding with this action.

SIXTH AFFIRMATIVE DEFENSE

The acts complained of were not known to, or participated in or engaged in by defendant or by Intervenor-Defendant; nor were they authorized, directed, endorsed or approved by them; nor were they done under their direction or supervision; nor did they permit such acts to occur; nor did they ratify or sanction such acts; nor did they have authority, power, or ability to do so; nor were any such acts or conduct carried out by agents of defendant or Intervenor-Defendant. Accordingly, defendant and Intervenor-Defendant are not liable to plaintiff for any acts or conduct alleged in the complaint.

SEVENTH AFFIRMATIVE DEFENSE

The claims set forth in the complaint are barred by reason of improper venue.

EIGHTH AFFIRMATIVE DEFENSE

The litigation of the claims set forth in the complaint may not proceed in the District of Massachusetts by reason of the doctrine of Forum non conveniens.

NINTH AFFIRMATIVE DEFENSE

The First Amendment of the United States Constitution and Articles 2 and 46 of the Massachusetts Declaration of Rights prohibit and bar adjudication or recovery upon plaintiff's complaint.

TENTH AFFIRMATIVE DEFENSE

The complaint constitutes a fraud and a sham, and should be stricken in whole or in part, pursuant to Rule 11 of the Federal Rules of Civil Procedure.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing in whole or in part to seek judicial relief for the acts and claims alleged in the complaint.

TWELFTH AFFIRMATIVE DEFENSE

The complaint constitutes an improper attempt to involve the court in the supervision of proceedings in other courts, some of which are still pending, and as a matter of comity and jurisdiction the court should not involve itself in such an inquiry.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join indispensable parties under Federal Rule of Civil Procedure 19, has failed to comply with the mandates of Federal Rule of Civil Procedure 19(c), and, accordingly, the complaint must be dismissed.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims based upon alleged written or oral statements made by officers, members, representatives, or attorneys of Scientology organizations are barred, in whole or in part, because the statements alleged are protected and privileged under the First Amendment to the Constitution of the United States, and under the Constitutions and the statutory and common law, of all relevant state jurisdictions.

INTERVENOR-DEFENDANT MARY SUE
HUBBARD'S COUNTERCLAIM FOR
MALICIOUS PROSECUTION, ABUSE OF
PROCESS AND LIBEL; DEMAND FOR
A JURY TRIAL.

Intervenor and Counterclaimant MARY SUE HUBBARD alleges:

PARTIES AND JURISDICTION

1. Counterdefendant MICHAEL J. FLYNN is, and at all times herein has been, an attorney at law whose offices are located in Boston, Massachusetts. He is a citizen of the State of Massachusetts.

2. Counterclaimant MARY SUE HUBBARD is, and at all times herein has been, a citizen of the State of California and a resident of the County of Los Angeles, California. She is the wife of L. Ron Hubbard, the Founder of the religion of Scientology, to whom she has been married since 1952.

3. This is an action for damages in excess of Ten Thousand Dollars (\$10,000.00), exclusive of interest and costs. Jurisdiction of this court is conferred by Title 28, United States Code, Section 1332(a)(1), based upon the diversity of citizenship of the parties.

FACTUAL BACKGROUND

4. Beginning sometime in 1979 or early 1980, Counterdefendant Flynn determined that it was in his economic interest to promote his law practice as a center of litigation

against various Churches of Scientology. As part of the development of this litigation, he determined that it was advantageous to his law suits to name L. Ron Hubbard, the Founder of the religion of Scientology, and Mary Sue Hubbard, the wife of L. Ron Hubbard and the Controller of the Church of Scientology of California until May, 1981, as additional defendants in Flynn's suits against various Churches of Scientology. By the summer of 1982, Counterdefendant Flynn had concentrated his law practice on this "Scientology litigation." By that time, Flynn was the attorney, or one of the attorneys, for the plaintiff or plaintiffs in at least the following suits (hereafter collectively referred to as the "Scientology litigation") in which various Churches of Scientology, L. Ron Hubbard, and/or Mary Sue Hubbard are named as defendants:

- A. La Venda Van Schaick v. Church of Scientology of California, Civil Action No. 79-2491-G (United States District Court, D. Mass.).
- B. Jose Baptista vs. Church of Scientology Mission of Cambridge, Inc. Civil Action No. 81-1194 (Middlesex County, Mass., Superior Court).
- C. Peggy Bear vs. Church of Scientology of New York, et al., Civil Action No. 81-4688 (United States District Court, S.D.N.Y.).
- D. Tonja C. Burden v. Church of Scientology, L. Ron Hubbard, and Mary Sue Hubbard, Civil Action 80-501-C-T-K (United States District Court, M. Fla.)

- E. Carol A. Garrity, et al. vs. Church of Scientology, L. Ron Hubbard, and Mary Sue Hubbard, Civil Action NO. 81-3260 (CBM) (United States District Court, C.D.Cal.)
- F. Marjorie J. Hansen vs. Church of Scientology of California, et al., Superior Court No. 41074 (Suffolk County, Mass., Superior Court).
- G. Thomas Jefferson vs. Church of Scientology, L. Ron Hubbard, and Mary Sue Hubbard, Civil Action No. 1-3261 (CBM) (United States District Court, C.D. Cal.).
- H. Dana Lockwood vs. Church of Scientology, L. Ron Hubbard, and Mary Sue Hubbard, Civil Action No. 81 4109 (CBM) (United States District Court, C.D.Cal.).
- I. Jane Lee Peterson, et al. vs. Church of Scientology, L. Ron Hubbard, and Mary Sue Hubbard, Civil Action No. 81-3259 (CBM) (United States District Court, C.D.Cal.).
- J. Steven Garritano vs. Church of Scientology of California, L. Ron Hubbard, Mary Sue Hubbard, et al., Civil Action No. 40906 (Suffolk County, Mass., Superior Court).
- K. Janet Troy vs. Church of Scientology of Boston, et al., Civil Action No. 41073 (Suffolk County, Mass., Superior Court)
- L. Donald Bear vs. Church of Scientology of New York, et al., No. 81-CIV-6864 (MJL) (United States District Court, S.D.N.Y.).
- M. Paulette Cooper vs. Church of Scientology of California, No. C 256783 (United States District Court, C.D. Cal.).

- N. Paulette Cooper v. Church of Scientology of New York, et al., No. 6732172 (Supreme Court of New York, County of New York).
- O. Paulette Cooper v. Church of Scientology of Boston, L. Ron Hubbard and Mary Sue Hubbard, No. 81-681-Mc (United States District Court, D. Mass).
- P. Gerald Armstrong v. Church of Scientology of California and L. Ron Hubbard, No. 420153 (Los Angeles, California, Superior Court).

On information and belief, Flynn's financial arrangement in all of the above named cases is that he and other counsel bear the expense of all costs incurred in connection with the litigation, and receive a contingency fee ranging as high as 50% or more on any plaintiffs' recoveries.

In some of the above named suits, Counterdefendant Flynn appeared as plaintiffs' counsel of record and in others he did not appear of record but nonetheless was plaintiffs' counsel.

5. On information and belief, Flynn also has some type of fee sharing or associational relationship with the counsel for plaintiffs in the following cases:

- A. Gabriel Cazares and Margaret Cazares v. Church of Scientology of California, No. 81-3472-CA-01-F (Volusia County, Fla., Circuit Court).
- B. Gabriel Cazares and Margaret Cazares v. Church of Scientology of California, L. Ron Hubbard, and Mary Sue Hubbard, No. 82-886-C-T-WC (United States District Court, M. Dist. Fla.).

- C. Nancy McLean and John McLean v. Church of Scientology of California, L. Ron Hubbard, Mary Sue Hubbard, No. 81-174-C-T-K (United States District Court, M. Dist. Fla.)
- D. Julie Christofferson v. Church of Scientology Mission of Davis, L. Ron Hubbard, et al., No. A77-04-05184 (Multnomah County, Oregon, Circuit Court).

6. On information and belief: As Counterdefendant Flynn became involved in this "Scientology litigation," he developed a plan designed to force Scientology to settle the cases quickly or otherwise obtain quick and large money judgments against Scientology. This plan was developed in early 1981. The plan entailed the formation, by Flynn's brother, Kevin, of a corporation called FAMCO (Flynn Associates Management Corporation), which would sell shares to the public and act as a consultant to Flynn and attorneys associated with him in his Scientology litigation in exchange for a percentage of the ultimate recovery, and which would assist in disaffecting as many Scientologists as possible. Flynn was an incorporator, and the secretary, of FAMCO. These disaffected Scientologists would then become clients of Counterdefendant Flynn, and his associated attorneys, who would file damage suits against various Churches of Scientology, L. Ron Hubbard and/or Mary Sue Hubbard on behalf of these clients. A further part of this plan involved generating adverse media coverage of Scientology and L. Ron Hubbard, publicly discrediting Scientology in an effort to force the closing of various Scientology organizations, promoting federal and state

governmental attacks on Scientology, and generally attempting to create a hostile public environment toward Scientology. It also included recruiting large numbers of attorneys who would sue Scientology, L. Ron Hubbard, and/or Mary Sue Hubbard, and providing the attorneys with "turn-key lawsuits," including clients, pleadings, evidence, documents, memoranda, witnesses, and general trial preparation materials. Flynn, in exchange, would receive a percentage of each plaintiff's recovery. It was contemplated that hundreds of such suits would be filed.

7. To the extent he was able, Counterdefendant Flynn and his associates implemented the plan described in ¶6. Despite his efforts, however, Flynn was unsuccessful in either forcing a large financial settlement or obtaining any favorable verdicts from his Scientology litigation. Instead, the various Churches of Scientology that Flynn had sued, as well as Mary Sue Hubbard, appeared as named defendants and vigorously contested the claims which Flynn's clients had made. On information and belief, it became clear to Flynn at some point in 1981 that he faced numerous legal and factual obstacles in ever obtaining a favorable financial recovery from the litigation; that extensive further litigation would be required to continue his effort; and that it could be years before his clients got any recovery, and they might not receive any recovery at all.

8. Scientology Founder L. Ron Hubbard went into seclusion in approximately March, 1980, and has not been seen by his family, or by any Church office, since that date.

9. On information and belief: Flynn, who had sued Mr. Hubbard as a named defendant in many of his suits (see ¶4), determined sometime in 1981 that a potentially short road to obtain a financial return from his litigation was to concentrate on obtaining a default judgment against Mr. Hubbard, who, in contrast to the Scientology Churches and Mary Sue Hubbard, was not personally appearing and litigating the suits naming him. Flynn determined that this concentration was advantageous because any attack on Mr. Hubbard was particularly sensitive to the Scientology Churches, which revere Mr. Hubbard as the Founder and sole source of doctrine of their religion and view him as one of the towering figures in the history of human civilization. Flynn hoped that focusing on Mr. Hubbard would force Scientology to settle favorably with him as a means of protecting Mr. Hubbard. In addition, Flynn hoped that he could obtain rapid default judgments against Mr. Hubbard if he could not force a settlement by the Scientology Churches, and thus obtain a quick financial return in that form. However, Flynn found this hope for a successful financial conclusion to his litigation stymied in that the Scientology Churches responded to his concentrated attacks on Mr. Hubbard with stiffened resolve. And, despite the fact that Mr. Hubbard had not appeared in the suits naming him, Flynn had not been able, as of Summer, 1982, to obtain default judgments against Mr. Hubbard. Around that time, Flynn realized that, in suits where various Churches of Scientology and/or Mary Sue Hubbard were defendants who were actively defending themselves,

he was not likely to obtain quick default judgments against co-defendant Mr. Hubbard.

10. On information and belief: By the summer of 1982, Flynn reached the conclusion that he must devise a new means to achieve a rapid financial return on his "Scientology litigation," which now completely dominated his law practice and on the success of which his financial well being and legal career rested. Flynn determined that, while continuing his previous efforts, he could only obtain a rapid financial return by concentrating even more specifically on Mr. Hubbard as the vulnerable point in the litigation. He developed a plan which involved identifying and if possible securing Mr. Hubbard's personal assets -- which Flynn had been unable to do in the previous litigation -- so that he could collect on those assets in the context of obtaining a default judgment against Mr. Hubbard; identifying Mr. Hubbard's whereabouts for service of process; and then bringing a massive, unprovable and unfounded suit against L. Ron Hubbard alone, naming no other party defendants. Flynn's plan was to obtain a default judgment against Mr. Hubbard, and avoid the problems he had faced in attempting to obtain previous default judgments against Mr. Hubbard because of the presence of other defendants who actively litigated against his claims. In this way, Flynn determined that he could force the defendants in his Scientology litigation to provide him a large financial settlement of his outstanding cases, or he could obtain a default judgment against Mr. Hubbard and collect on his assets.

FIRST CAUSE OF ACTION:

MALICIOUS PROSECUTION

11. Intervenor and Counterclaimant realleges paragraphs 1 through 9.

12. In approximately August or September, 1980, Counterdefendant Flynn came into contact with Ronald DeWolf, the eldest son of L. Ron Hubbard from his first marriage. Mr. DeWolf is not related by blood to Counterclaimant Mary Sue Hubbard. The contact between Mr. DeWolf and Flynn arose from the fact that DeWolf had long been estranged from and antagonistic to L. Ron Hubbard and had, on many occasions, publicly attacked his father and Scientology. Mr. DeWolf, who had not seen his father since 1959, and who had, in 1972, renounced in writing any claim he might have to his father's estate, retained Flynn as his counsel to represent him in developing legal claims for Mr. DeWolf against L. Ron Hubbard, against one or more Churches of Scientology and/or against Mary Sue Hubbard. Mr. DeWolf also agreed to assist Flynn in his "Scientology litigation" by providing him information and acting as a witness on behalf of Flynn and his clients.

13. In order to identify and if possible secure Mr. Hubbard's assets and/or whereabouts, to advance Flynn's position in any way possible in his Scientology litigation, and to assist Mr. DeWolf to obtain a financial recovery to which he had no legitimate entitlement, Flynn counseled, advised and instigated Mr. DeWolf to file an action designed to accomplish these objectives. On November 10, 1982, pursuant to Flynn's counsel, advice

and instigation, Ronald DeWolf commenced an action under California Probate Code §§260 et seq. to have L. Ron Hubbard declared a "missing person" under the Probate Code. More particularly, Mr. DeWolf alleged that L. Ron Hubbard was a "missing person" who was either dead or mentally incompetent and alleged that his assets were being dissipated by Scientologists purporting to handle Mr. Hubbard's affairs. Through his petition, Mr. DeWolf sought to be appointed trustee over the estate of L. Ron Hubbard. This action was filed in the Superior Court of the State of California, County of Riverside, entitled In re the Estate of L. Ron Hubbard, No. 47150 (hereafter "the probate suit" or "the probate action"). The probate petition contained lengthy allegations accusing Mr. Hubbard of criminality, venality, fraud, insanity, and other similar matters, all of which were stricken by the court because these accusations were irrelevant to the germane issues in the petition. DeWolf relied completely on information provided by Flynn in making the allegations which were not stricken by the court as irrelevant. Flynn had a contingency fee arrangement with DeWolf whereby he would be paid by DeWolf out of funds DeWolf obtained from Mr. Hubbard's estate or would be paid directly by the estate.

14. Flynn did not appear as counsel of record in the initial filing of the probate suit, but he nonetheless acted as the chief counsel for Mr. DeWolf in the suit. Flynn continued to counsel, advise and instigate Mr. DeWolf to press and maintain the action throughout its duration.

15. A few days prior to the filing of the probate suit, Flynn contacted counsel for Mary Sue Hubbard in an effort to persuade Mrs. Hubbard to join in the probate suit. In the course of a telephone conversation on November 9, Mrs. Hubbard's counsel advised Flynn that Mrs. Hubbard's position was that Flynn and DeWolf had a conflict of interest in light of their desires to extract money from Mr. Hubbard's estate and adverse interests to Mr. Hubbard; that the action was baseless because, although she did not know the whereabouts of her husband, she was supported by him and received regular correspondence from him and he was not a "missing person"; that Mr. DeWolf had no legitimate interest in Mr. Hubbard's estate and, indeed, had been disinherited by Mr. Hubbard; and that the whole concept of the probate suit was based in bad faith on the part of Flynn and Mr. DeWolf. In response, Flynn denied a conflict of interest on the theory that he and his other clients were inchoate creditors of Mr. Hubbard. Flynn also indicated his belief that, in order to oppose this petition, someone would have to come forward and make a strong showing that Mr. Hubbard is alive and responsible for his affairs. Flynn expressed the opinion that an individual would have to come forward who could show that he or she is authorized to handle Mr. Hubbard's affairs, and that this in turn would open up depositions establishing a chain of discovery to Mr. Hubbard himself. Flynn commented that, in light of the position taken by the Church, and to some extent by Mrs. Hubbard, in various civil cases, he believed it would be very difficult for anyone to now come forward and make such a showing, and that if such a showing

were made, it would contradict the prior positions which had been taken by the Church and/or Mrs. Hubbard. In a letter sent to Mr. Flynn dated November 11, 1982, Mrs. Hubbard's counsel confirmed her position and advised Mr. Flynn that, in light of the statements he had made to Mrs. Hubbard's counsel on the telephone, there was already a question of whether the action constituted an abuse of process.

16. On information and belief, Flynn, either directly or indirectly, initiated and/or encouraged press and media awareness and coverage of the probate suit and provided copies of the probate petition to various media representatives. Flynn and Mr. DeWolf spoke with several media representatives concerning the probate suit and communicated the erroneous and/or irrelevant allegations contained therein. On information and belief, Flynn counseled, advised and instigated DeWolf to maximize his media exposure and publicize the allegations contained in the probate petition.

17. Shortly after the probate suit was filed, Mary Sue Hubbard appeared as respondent in it and opposed the petition for appointment of a trustee. Mary Sue Hubbard has been married to L. Ron Hubbard since 1952, was at that time and presently is solely dependent upon him for her support, and was and is a legatee under Mr. Hubbard's will. That support, her interest in her husband's estate, and the tranquility of her marital relationship were threatened by the probate suit.

18. Subsequently Flynn applied to appear as Mr. DeWolf's counsel pro hac vice in the probate suit. He did this despite

the fact that he had a patent conflict of interest and collateral purposes in acting as counsel to Mr. DeWolf on the probate suit. The court denied Flynn's application in an order dated March 22, 1983, finding that Flynn was disqualified from acting as Mr. DeWolf's counsel because he had a conflict of interest with L. Ron Hubbard, his estate, and his heirs (including Mary Sue hubbard), in that Mr. Flynn was representing litigants seeking damages from L. Ron Hubbard and Mary Sue Hubbard, and in that the purpose of the probate action was supposed to be the protection of L. Ron Hubbard, his assets, his estate and his heirs. Flynn had previously acted as lead attorney for Mr. DeWolf, including taking the major portion of the depositions in the probate suit, which were held on the East Coast. After his disqualification, Flynn continued to play a central advisory role to DeWolf in the probate suit, as well as a central role in drafting relevant legal papers.

19. Early in the probate suit, the court entered an order requiring that neither party disclose the contents of any discovery taken in the case except insofar as was necessary in good faith to prepare and litigate the suit. The order specifically required that discovery not be disclosed to any attorneys representing parties suing L. Ron Hubbard, Mary Sue Hubbard, or any Scientology organization, and that discovery in the suit not be used in any other proceedings, either directly or indirectly. On July 8, 1983, Flynn was adjudged in contempt of court in the probate suit for having, on two separate occasions, violated this order by disclosing the contents of discovery taken

in the probate suit for use in other suits in which he was involved as part of his Scientology litigation.

20. On or about June 28, 1983, the Superior Court of the State of California, County of Riverside, granted Mrs. Hubbard's Motion for Summary Judgment and dismissed the probate suit, thereby resulting in a termination of the suit favorable to Mrs. Hubbard. On July 14, 1983, judgment for Mary Sue Hubbard as respondent was entered in the probate suit.

21. At the time of the commencement of the suit, Flynn did not have probable cause to believe that L. Ron Hubbard was a "missing person" within the meaning of and as required by California Probate Code §260.

22. At the time of the commencement of the suit, Flynn did not have probable cause to believe that L. Ron Hubbard's estate was in need of attention, supervision and care of ownership, within the meaning of and as separately and independently required by California Probate Code §260.

23. Flynn further acted without probable cause in that, after discovery had been conducted in the probate suit, he counseled, advised and instigated that it be maintained even after being provided information demonstrating that L. Ron Hubbard was not a "missing person" within the meaning of California Probate Code §260.

24. Flynn further acted without probable cause in that, after discovery had been conducted in the suit, he counseled, advised and instigated that it be maintained even after being provided information demonstrating that L. Ron Hubbard's estate

was not in need of attention, supervision and care of ownership within the meaning of California Probate Code §260.

25. Flynn acted maliciously in counseling, advising and instigating the bringing and maintaining of the probate action in that it was commenced and maintained without probable cause and for collateral purposes which included: (a) identifying Mr. Hubbard's assets for purposes of Flynn's other litigation against L. Ron Hubbard, Mary Sue Hubbard, and/or various Churches of Scientology; (b) gaining control of Mr. Hubbard's assets for purposes of Flynn's other litigation against L. Ron Hubbard, Mary Sue Hubbard, and/or various Churches of Scientology; (c) attempting to locate the whereabouts of L. Ron Hubbard for purposes of Flynn's other litigation against L. Ron Hubbard, Mary Sue Hubbard, and/or various Churches of Scientology; (d) obtaining information for use in Flynn's other litigation against L. Ron Hubbard, Mary Sue Hubbard and/or various Churches of Scientology; (e) placing on the public record hostile and unfavorable statements about L. Ron Hubbard, Mary Sue Hubbard and Scientology, in order to discredit them, poison the public's mind against them and/or put pressure on them to assist his other litigation; (f) inducing a financial settlement for Ronald DeWolf to which he had no legitimate claim; (g) inducing a financial settlement on behalf of Flynn's clients suing L. Ron Hubbard, Mary Sue Hubbard and/or various Churches of Scientology; and (h) on information and belief, obtaining the information concerning Mr. Hubbards assets and/or whereabouts necessary to allow Flynn to then sue Mr. Hubbard as a sole defendant in the underlying

complaint herein and thereby secure and collect on a default judgment against Mr. Hubbard.

26. After Mary Sue Hubbard won the summary judgment in the probate suit, Flynn publicly acknowledged his collateral purposes in counseling, advising and instigating the bringing and maintaining of the probate action. He did so by: (1) stating to one or more third parties words to the effect that the judge's ruling established what Flynn had wanted to determine in the first place, i.e., that Mr. Hubbard is available as a defendant and has legally authorized representatives handling his affairs; (2) indicating in a speech given shortly after the summary judgment ruling that "we're going to accept that ruling; L. Ron Hubbard is not missing. His affairs are being conducted by Author Services, Inc. They're his authorized business agents; they're the people that you want to serve process on. You serve them. So now we're going to proceed in our lawsuit and with some new lawsuits by suing Mr. Hubbard through Author Services, Inc.," and (3) stating in a document filed in this case that his efforts "to locate defendant [L. Ron Hubbard] in order to serve him with process ... have included ... the filing of In re the Estate of L. Ron Hubbard, #47150 (Riverside Sup. Ct., Calif.)"

27. As a direct and proximate result of Flynn's counseling, advising and instigating the bringing and maintaining of the above-mentioned action, Counterclaimant has been damaged through having to provide attorneys' fees and costs of defending the probate suit, and through suffering emotional distress, including anxiety about her means of support, anxiety about intrusion into

hers and her husband's privacy and well being, and public humiliation.

28. Because the afore-mentioned actions of Flynn were malicious, Counterclaimant is entitled to punitive damages.

SECOND CAUSE OF ACTION:

ABUSE OF PROCESS (PROBATE SUIT)

29. Counterclaimant realleges paragraphs 1 through 28.

30. Flynn wilfully used process in the probate suit, in a manner not proper in the regular conduct of a proceeding, in the following respects:

A. He generated adverse publicity concerning the probate suit to discredit L. Ron Hubbard, Mary Sue Hubbard, and/or the religion of Scientology in order to improve the position of Flynn's clients in litigation against L. Ron Hubbard, Mary Sue Hubbard, and/or various Churches of Scientology, and used the pendency of the suit as a means of obtaining media exposure for his hostile and unfavorable views of L. Ron Hubbard and/or Scientology and to create pressure on the defendants in Flynn's Scientology litigation.

B. He included in the petition initiating the probate suit scandalous and derogatory information, which had no relationship to the issues in the suit and which was stricken from the petition as irrelevant to it, in order to prejudice the public and the court and to encourage widespread hostile and derogatory publicity concerning L. Ron Hubbard, Mary Sue Hubbard, and/or Scientology.

C. He filed the probate suit, and used its pendency, as a club or weapon to attempt to induce a financial settlement of the claims of his clients against L. Ron Hubbard, Mary Sue Hubbard, and/or various Churches of Scientology.

D. He filed the suit, and used its pendency, as a club or a weapon to attempt to induce a financial settlement for Mr. DeWolf from L. Ron Hubbard, Mary Sue Hubbard, and/or various Churches of Scientology, of which settlement he would have received a contingency fee portion.

E. He filed the suit, and used its pendency, to gain information about L. Ron Hubbard's private and financial affairs for use in his other litigation against L. Ron Hubbard, Mary Sue Hubbard, and/or various Churches of Scientology, including, on information and belief, for use in the underlying complaint herein as part of his previously described plan to identify Mr. Hubbard's assets and/or whereabouts and to obtain a default judgment against Mr. Hubbard.

F. He engaged in discovery in the suit for the purpose of gaining information concerning Mr. Hubbard's financial arrangements and/or whereabouts for use in other lawsuits in which L. Ron Hubbard, Mary Sue Hubbard, and/or various Churches of Scientology are defendants, including, on information and belief, for use in the underlying complaint herein as part of his previously described plan to identify Mr. Hubbard's assets and/or whereabouts and to obtain a default judgment against Mr. Hubbard.

G. He used the information obtained through discovery in the suit in other of his cases against L. Ron Hubbard, Mary Sue Hubbard and/or various Churches of Scientology, in violation of a specific court order prohibiting him from doing so.

H. He acted as DeWolf's counsel in the probate suit even though he knew, or should have known, that he had a conflict of interest with Mr. Hubbard which disqualified him from acting as counsel in the probate suit.

31. In engaging in the acts described in ¶30, Flynn acted maliciously, and with ulterior purposes and to obtain collateral advantages which are set forth in ¶25, above.

32. As a direct and proximate result of Flynn's abuse of process, Counterclaimant has been damaged through having to provide attorneys' fees and other costs in defending the probate suit, and through suffering emotional distress, including anxiety about her means of support, anxiety about the intrusion into hers and her husband's privacy and well being, and public humiliation.

33. Because the afore-mentioned actions of Flynn were malicious, Counterclaimant is entitled to punitive damages.

THIRD CAUSE OF ACTION:

LIBEL

34. Counterclaimant realleges paragraphs 1 through 33.

35. As a result of the filing of the probate suit, Mary Sue Hubbard was required to present in court extensive evidence concerning Mr. Hubbard's personal financial and business affairs in

order to respond to the unfounded allegations that Mr. Hubbard's estate was in need of attention, supervision and care and that Mr. Hubbard was a "missing person." Hence, Flynn succeeded in his attempt to discover information concerning Mr. Hubbard's financial affairs. On information and belief, Flynn was then in a position to move to implement the final part of his plan, which was to prepare a massive, unprovable and unfounded suit by himself against L. Ron Hubbard only, with the objective being to obtain a default judgment without the necessity of having to prove any of his claims and thereby to extract a financial return on his great investment of time and resources in his Scientology litigation.

36. On information and belief, Flynn proceeded to personally draft the underlying complaint herein (entitled Michael Flynn v. Lafayette Ronald Hubbard, No. 83-2642-C, D. Mass.) (hereafter "Flynn suit" or "Flynn action"). In September, 1983, after the complaint was written in a draft form, and prior to filing it, Flynn provided a copy of the draft complaint to a reporter for a Massachusetts newspaper chain, the North Shore Weeklies. Among the statements made in the draft complaint are the following:

- A. "This lawsuit ... [is one] for a sustained pattern of intentional torts perpetrated by Hubbard and his agents and employees pursuant to a written conspiracy to 'destroy' the plaintiff." (pg.1)
- B. "(2) [L. Ron] Hubbard is the founder, controller, principal and absolute dictatorial authority over a

variety of corporations which serve as his agents. These corporations include the Church of Scientology of California, Inc., ("CSC"), Church of Scientology of Boston, Inc., ("CSB"), Religious Technology Center ("RTC"), Church of Scientology International ("CSI"), Authors Services, Inc., ("ASI"), and Flag Services Organization, Inc., ("FSO"). The foregoing corporations, acting specifically as agents of Hubbard within the scope of the authority granted to them by Hubbard, and upon the express orders of Hubbard engaged in the conspiracy to perpetrate the torts alleged herein."

(pg. 3)

- C. "(4)(c) Hubbard established, supervised and controlled in writing an organization called the 'Guardian's Office' ('G.O.') which he placed in each of the 'Scientology' corporations for purposes of enforcing his express daily orders..." (p. 5)
- D. "(6) At all times material to this Complaint, Hubbard has controlled said 'Scientology' corporations ... through several key individual agents. These agents include his wife, Mary Sue Hubbard" (p. 9).
- E. "(9) Pursuant to the Fair Game Policy ..., Hubbard and his agents entered into a written conspiratorial scheme, code named 'Operation Juggernaut.' 'Operation Juggernaut' was designed to 'lie to, cheat, sue and destroy' the plaintiff by infiltrating plaintiff's law offices; stealing plaintiff's files, generally

harassing plaintiff; 'separating' plaintiff from his clients; defaming plaintiff privately and in the news media; bringing nine groundless legal actions against plaintiff and his colleagues and employees; bringing nine groundless bar complaints to get plaintiff disbarred; placing water in the fuel tanks of plaintiff's airplane to kill him; stealing plaintiff's telephone codes and charging calls to his code; attempting to 'frame' plaintiff by stealing the telephone codes of a California company unknown to plaintiff; calling plaintiff's clients and charging it to the California company; harassing plaintiff's clients and stealing their files from plaintiff's office; calling in a bomb threat to plaintiff; threatening to poison plaintiff; kidnapping plaintiff's clients; issuing outrageously false and defamatory press releases for distribution on the streets of Boston, Massachusetts; Clearwater, Florida; and Los Angeles, California; writing false and defamatory articles and distributing them at plaintiff's law school; providing false financial information to the IRS to initiate an investigation; stealing plaintiff's telephone toll call records from the telephone company; conducting illegal tape-recording of plaintiff's calls; illegally obtaining plaintiff's bank account information; trespassing onto plaintiff's private property; interfering with plaintiff's relationships with his

clients; placing dirt in plaintiff's automobile fuel tank; engaging in a wholesale pattern of abusive and harrassive conduct." (pgs. 13-14).

F. "(37) Hubbard and his agents, including but not limited to 'Scientology' corporations set forth in paragraph 2, and individual agents such as Mary Sue Hubbard, David Miscavige, Joseph Lisa, Arthur Maren, James Mulligan, Kevin Tighe, and others, together with attorneys retained by Hubbard's agents including but not limited to Harvey Silverglate, Jay Roth, Steven Burris, Donald Randolph, Sanford Katz, Dan Warren, John Peterson and others, combined together to accomplish the unlawful purposes set forth herein, and used the unlawful means set forth herein The following overt acts were committed by Hubbard and his agents pursuant to the conspiratorial scheme, code named 'Operation Juggernaut.' These overt acts constitute unlawful purposes and unlawful means:

"(a) Infiltration of plaintiff's office by Ford Schwartz, Silvana Garritano, Bill Broderick and others for the purpose of stealing documents and information, which documents and information were actually stolen by them, while posing as clients and employees of plaintiff.

"(b) Trespassing onto private property every day for a period of two years for the purpose of stealing plaintiff's trash. G.O. agents, acting pursuant to

Hubbard's policies and orders devised elaborate schemes to trespass onto the property at 12 Union Wharf during the early morning hours and carried electronic beepers for the purpose of avoiding detection.

"(c) Using highly confidential attorney-client communications and work-product stolen from plaintiff's trash and burglarized from his office, and stolen directly from his clients for the purpose of separating plaintiff from his clients, disrupting plaintiff's law practice, destroying plaintiff's reputation and business, interfering with the plaintiff's cases

"(d) Adopting a written plan to sue the plaintiff and his colleagues, clients and employees in jurisdictions throughout the U.S. for the sole purpose of harassing the plaintiff

"(e) Adopting a written plan to 'get Michael Flynn disbarred' and then filing 9 separate groundless, frivolous Complaints with the Board of Bar Overseers.

"(f) Threatening to poison plaintiff by sending him a postcard stating that Hubbard's agents were 'inside' his operation and that he should have his food tested.

"(g) Placing water in the fuel tanks of plaintiff's airplane on or about October 19, 1979, nearly resulting in a fatal crash with 4 occupants in the airplane at the time, including plaintiff's son.

"(h) Calling plaintiff's home at all hours of the night to disturb plaintiff while he was sleeping.

- "(i) Making obscene telephone calls to plaintiff's neighbors, suggesting that it was plaintiff.
- "(j) Adopting a written plan to knowingly libel and slander the plaintiff in order to destroy his reputation.
- "(k) Adopting a written plan to knowingly and intentionally inflict emotional distress on the plaintiff by conducting all of the activities set forth in this Complaint.
- "(l) Attempting to 'frame' plaintiff of the crime of interstate theft of telephone codes.
- "(m) Stealing plaintiff's telephone codes and charging calls to his code.
- "(n) Threatening plaintiff's life on the telephone.
- "(o) Sending a bomb threat to plaintiff's building.
- "(p) Putting dirt in the fuel tank of plaintiff's car." (pgs. 55-62).

37. By the aforesaid statements described in ¶36, Flynn intended to convey and did convey to anyone reading the draft complaint the defamatory meaning that Mary Sue Hubbard was a knowing participant in, and committed unlawful acts in furtherance of, a conspiracy to, among other things, murder him, steal from him, and destroy him by false, illegal and unconscionable means.

38. On information and belief, Flynn assumed, or should reasonably have foreseen, in making the statements contained in ¶36, that those who read the draft complaint were aware of or

would discover that Mary Sue Hubbard had supervised the "Guardian's Office" referred to in ¶36-B, above, for a substantial period of the time referred to in the draft complaint, and that said readers would thereby understand that Mary Sue Hubbard was a central and key figure and actor in the conspiracy alleged therein.

39. It was reasonably foreseeable and expected by Flynn that the contents of the draft complaint which he provided to the reporter for North Shore Weeklies would be shown or be described to others employed at or associated with North Shore Weeklies. Said reporter did in fact show, or describe the contents of, said draft complaint to others who were employed at or associated with North Shore Weeklies.

40. The reporter for the North Shore Weeklies to whom Flynn provided the draft complaint, as well as others at North Shore Weeklies to whom he showed it, or described its contents, understood said draft complaint to mean that Mary Sue Hubbard was a knowing participant in, and committed unlawful acts in furtherance of, a conspiracy to, among other things, murder Flynn, steal from him, and destroy him by false, illegal and unconscionable means.

41. On information and belief, those employed or associated with North Shore Weeklies who read, or learned the contents of, said draft complaint were aware of or discovered that Mary Sue Hubbard had supervised the "Guardian's Office" for a substantial period of the time referred to in the draft complaint, and understood the allegations recited in ¶36, above, to include that Mary

Sue Hubbard was a central and key figure and actor in the conspiracy alleged therein.

42. The meaning of the statements contained in ¶36 to a reasonable person was that Mary Sue Hubbard was a knowing participant in, and committed unlawful acts in furtherance of, a conspiracy to murder Flynn, to steal from him, and to destroy him by false, illegal and unconscionable means.

43. By the statements contained in ¶36, Flynn charged Counterclaimant Mary Sue Hubbard with the commission of serious criminal conduct.

44. On information and belief, Flynn made the aforementioned defamatory statements with reckless disregard as to their truth or falsity and to their meaning to those who read them.

45. On information and belief, Flynn made the aforesaid defamatory statements knowing them to be false, and made them intentionally and recklessly for the purpose of damaging Counterclaimant Mary Sue Hubbard.

46. On information and belief, Flynn made the aforesaid defamatory statements knowing that he did not know whether they were true.

47. By reason of the aforesaid acts and omissions of Flynn, Counterclaimant Mary Sue Hubbard has sustained actual serious damages, including but not limited to the following: (a) Her reputation has been grievously injured. (b) She has suffered public humiliation and embarrassment, thereby causing significant emotional harm and suffering.

48. Because the afore-mentioned actions of Flynn were malicious, Counterclaimant is entitled to punitive damages.

FOURTH CAUSE OF ACTION:

LIBEL

49. Counterclaimant realleges paragraphs 1 through 48.

50. On information and belief, Flynn disseminated or caused to be disseminated the underlying complaint herein to various news media representatives, including but not limited to the Clearwater Sun, for the specific purpose of publishing the complaint to said news media representatives and for the additional purpose of having those news media representatives publish the information contained in the complaint to the public at large.

51. Among the statements made in the underlying complaint are the following:

- A. "This suit seeks damages for acts perpetrated against plaintiff ... by defendant and various of his individual and organizational agents and employees pursuant to a written conspiracy to 'destroy' the plaintiff." (pg.1)
- B. "4. At all times material hereto, Hubbard has done business ... directly through various entities known as the Church of Scientology of California, Inc. ('CSC'), the Church of Scientology of Boston, Inc. ('CSB'), Flag Services Organization, Inc. ('FSO') Religious Technology Center ('RTC'), Church of Scientology International ('CSI'), Author Services, Inc., ('ASI'),

as well as various other organizations (collectively 'Scientology organizations') and individuals. ..."
(pg. 3).

- C. 5. Defendant [L. Ron Hubbard] is the founder, controller, principal and absolute authority over the Scientology organizations and individuals. The Scientology organizations, as well as various individuals, acting as agents of defendant within the scope of the authority granted to them by and upon his express orders, engaged in the conspiracy to perpetrate the torts alleged herein." (pg. 5)
- D. "8. Hubbard established, supervised and controlled an organization called the 'Guardian's Office' ('G.O.') which he placed in each of the 'Scientology' corporations for purposes of enforcing his express daily orders. ..." (p. 6)
- E. "9. At all times material hereto, Hubbard has controlled said 'Scientology' corporations ... through several key individual agents. These agents include his wife, Mary Sue Hubbard" (p. 9).
- F. "13. Pursuant to the Fair Game Policy ..., Hubbard and his agents entered into a written conspiratorial scheme, code named 'Operation Juggernaut.' 'Operation Juggernaut' was designed to 'lie to, cheat, sue and destroy' the plaintiff by infiltrating plaintiff's law offices; stealing plaintiff's files, generally harassing plaintiff; 'separating' plaintiff from his

clients; defaming plaintiff privately and in the news media; bringing nine groundless legal actions against plaintiff and his colleagues and employees; bringing nine groundless bar complaints to get plaintiff disbarred; placing water in the fuel tanks of plaintiff's airplane to kill him; stealing plaintiff's telephone codes and charging calls to his code; attempting to 'frame' plaintiff by stealing the telephone codes of a California company unknown to plaintiff then calling plaintiff's clients and charging it to the California company; harassing plaintiff's clients and stealing their files from plaintiff's office; calling in a bomb threat to plaintiff; threatening to poison plaintiff; kidnapping plaintiff's clients; issuing outrageously false and defamatory press releases for distribution on the streets of Boston, Massachusetts, Clearwater, Florida, and Los Angeles, California; writing false and defamatory articles and distributing them at plaintiff's law school; providing false financial information to the IRS to initiate an investigation; stealing plaintiff's telephone toll call records from the telephone company; conducting illegal tape-recording of plaintiff's calls; illegally obtaining plaintiff's bank account information; trespassing onto plaintiff's private property; interfering with plaintiff's relationships with his clients; placing dirt in the plaintiff's

automobile fuel tank; engaging in a wholesale pattern of abusive and harrassive conduct." (pgs. 11-12).

- G. "(37) Hubbard and his agents, including but not limited to 'Scientology' organizations set forth in paragraph #4, and individual agents such as Mary Sue Hubbard, David Miscavige, Joseph Lisa, Arthur Maren, James Mulligan, Kevin Tighe, and others, together with attorneys retained by Hubbard's agents including but not limited to Harvey Silverglate, Jay Roth, Steven Burris, Donald Randolph, Sanford Katz, Dan Warren, John Peterson and others, combined together to accomplish the unlawful purposes set forth herein, and used the unlawful means set forth herein The following overt acts were committed by Hubbard and his agents pursuant to the conspiratorial scheme, code named 'Operation Juggernaut.' These overt acts constitute unlawful purposes and unlawful means:

"(a) Infiltration of plaintiff's office by Ford Schwartz, Silvana Garritano, Bill Broderick and others for the purpose of stealing documents and information, which documents and information were actually stolen by them, while posing as clients and employees of plaintiff.

"(b) Trespassing onto private property ... for the purpose of stealing plaintiff's trash. G.O. agents, acting pursuant to Hubbard's policies and orders devised elaborate schemes to trespass onto the property

at 12 Union Wharf during the early morning hours and carried electronic beepers for the purpose of avoiding detection.

"(c) Using highly confidential attorney-client communications and work-product stolen from plaintiff's trash and burglarized from his office, and stolen directly from his clients for the purposes as set forth supra."

"(d) Adopting a written plan to sue the plaintiff and his colleagues, clients and employees in jurisdictions throughout the U.S. for the sole purpose of harassing the plaintiff

"(e) Adopting a written plan to 'get Michael Flynn disbarred' and then filing 9 separate groundless, frivolous Complaints with the Board of Bar Overseers.

"(f) Threatening to poison plaintiff by sending him a postcard stating that Hubbard's agents were 'inside' his operation and that he should have his food tested.

"(g) Placing water in the fuel tanks of plaintiff's airplane on or about October 19, 1979, nearly resulting in a fatal crash with 4 occupants in the airplane at the time, including plaintiff's son.

"(h) Calling plaintiff's home at all hours of the night to disturb plaintiff while he was sleeping.

"(i) Making obscene telephone calls to plaintiff's neighbors, suggesting that it was plaintiff.

"(j) Adopting a written plan to knowingly libel and slander the plaintiff in order to destroy his reputation.

"(k) Adopting a written plan to knowingly and intentionally inflict emotional distress on the plaintiff by conducting all of the activities set forth in this Complaint.

"(l) Attempting to 'frame' plaintiff of the crime of interstate theft of telephone codes.

"(m) Stealing plaintiff's telephone codes and charging calls to his code.

"(n) Threatening plaintiff's life on the telephone.

"(o) Sending a bomb threat to plaintiff's building.

"(p) Putting dirt in the fuel tank of plaintiff's car." (pgs. 50-54).

52. By the aforesaid statements described in ¶51, Flynn intended to convey and did convey to anyone reading the complaint the defamatory meaning that Mary Sue Hubbard was a knowing participant in, and committed unlawful acts in furtherance of, a conspiracy to, among other things, murder him, steal from him, and destroy him by false, illegal and unconscionable means.

53. On information and belief, Flynn assumed, or should reasonably have foreseen, in making the statements contained in ¶51, that those who read the complaint were aware of or would discover that Mary Sue Hubbard had supervised the "Guardian's Office" referred to in ¶51-B, supra, for a substantial period of the time referred to in the complaint, and that said readers

would thereby understand that Mary Sue Hubbard was a central and key figure and actor in the conspiracy alleged therein.

54. The various media representatives to whom Flynn provided the complaint, as well as the others to whom they showed it, understood said complaint to mean that Mary Sue Hubbard was a knowing participant in, and committed unlawful acts in furtherance of, a conspiracy to, among other things, murder Flynn, steal from him, and destroy him by false, illegal and unconscionable means.

55. It was reasonably foreseeable and expected by Flynn that the contents of the complaint which he provided to the various media representatives would be shown to others employed at their places of employment. On information and belief, said media representatives did in fact show said complaint to others who were employed at or associated with their places of employment.

56. On information and belief, those employed or associated with the various media representatives described above who read said complaint were aware of or discovered that Mary Sue Hubbard had supervised the "Guardian's Office" for a substantial period of the time referred to in the complaint, and understood the allegations recited in ¶51, above, to include that Mary Sue Hubbard was a central and key figure and actor in the conspiracy alleged therein.

57. The meaning of the statements contained in ¶51 to a reasonable person was that Mary Sue Hubbard was a knowing participant in, and committed unlawful acts in furtherance of, a conspiracy to murder Flynn, to steal from him, and to destroy him

by false, illegal and unconscionable means.

58. By the statements contained in ¶51, Flynn charged Counterclaimant Mary Sue Hubbard with the commission of serious criminal conduct.

59. On information and belief, Flynn made the aforementioned defamatory statements with reckless disregard as to their truth or falsity and to their meaning to those who read them.

60. On information and belief, Flynn made the aforesaid defamatory statements knowing them to be false, and made them intentionally and recklessly for the purpose of damaging Counterclaimant Mary Sue Hubbard.

61. On information and belief, Flynn made the aforesaid defamatory statements knowing that he did not know whether they were true.

62. By reason of the aforesaid acts and omissions of Flynn, Counterclaimant Mary Sue Hubbard has sustained actual serious damages, including but not limited to the following: (a) Her reputation has been grievously injured. (b) She has suffered public humiliation and embarrassment, thereby causing significant emotional harm and suffering.

63. Because the afore-mentioned actions of Flynn were malicious, Counterclaimant is entitled to punitive damages.

FIFTH CAUSE OF ACTION:

ABUSE OF PROCESS (FLYNN SUIT)

64. Counterclaimant realleges paragraphs 1 through 63.

65. On September 7, 1983, believing that he had now identified Mr. Hubbard's financial arrangements and the means to trace his assets, and believing that Mr. Hubbard would not appear to defend in a suit naming him as a defendant, Flynn filed the underlying complaint herein, naming only Mr. Hubbard as a defendant.

66. The Flynn complaint alleges that L. Ron Hubbard, Mary Sue Hubbard and others knowingly and intentionally conspired to murder Flynn, steal from him, and destroy him by false, illegal and unconscionable means, through a network of alleged agents. The complaint contains no allegation that L. Ron Hubbard himself engaged in any directly tortious conduct toward Mr. Flynn.

67. One information and belief, Flynn did not believe, when he filed the Flynn complaint, that L. Ron Hubbard or Mary Sue Hubbard had any personal knowledge of, had participated in, or had combined with others to accomplish the tortious or unlawful objectives or activities alleged in the complaint.

68. On information and belief, Flynn, when he filed the Flynn complaint, had no reasonable basis to believe, and had received no reasonably reliable information to confirm, that L. Ron Hubbard or Mary Sue Hubbard had any personal knowledge of, had participated in, or had combined with others to accomplish the tortious or unlawful objectives or activities alleged in the complaint.

69. On information and belief: Flynn, at the time he filed the underlying complaint, named only L. Ron Hubbard as a defendant because he believed that he would never be put to the

necessity of proving his massive, unprovable and unfounded allegations against Mr. Hubbard. Flynn believed and assumed that L. Ron Hubbard would not appear to defend the suit and that he could accordingly obtain a default judgment against Mr. Hubbard while never having to prove his allegations in litigation with any of the persons named as agents of Mr. Hubbard in the complaint.

70. In the Flynn complaint, Flynn named Counterclaimant Mary Sue Hubbard as an agent of Mr. Hubbard who carried out and directed tortious and criminal activities. On information and belief, he did not name her as defendant so that she could not appear and defend against the unfounded allegations made in the complaint.

71. On information and belief, Flynn arranged with unknown persons to have anonymous press releases announcing his suit, along with a copy of the complaint, distributed to various newspapers, including but not limited to the Clearwater Sun, along with copies of the Flynn complaint, shortly after September 7, 1983.

72. On information and belief: Flynn willfully used process in the Flynn suit, in a manner not proper in the regular conduct of a proceeding, in the following respects:

A. He filed the suit and used and continues to use its pendency as a club or a weapon to attempt to induce a financial settlement of the claims of his clients in their litigation against L. Ron Hubbard, Mary Sue Hubbard, and/or various Churches of Scientology.

B. He filed the suit without any good faith belief that it was or is well founded and included in it allegations which did not believe, and/or which he had no reasonable basis to believe, and had no reasonably reliable information to confirm, without any intention of ever having to prove its allegations but rather for the sole purpose of obtaining a default judgment against L. Ron Hubbard.

C. He named Mary Sue Hubbard as a person responsible for all the wrongful and criminal conduct alleged in the suit but did not name her as a defendant in order to prevent her from being able to appear and defend against the unfounded allegations in the complaint.

D. He filed the suit and used and continues to use its pendency as a litigation tactic for his clients' other suits against L. Ron Hubbard, Mary Sue Hubbard and/or various Churches of Scientology and without any reasonable or good faith belief that the suit was or is well founded.

E. He included in the complaint initiating the suit allegations which he knew or reasonably should have known to be false in order to prejudice the public and the court and to encourage widespread hostile and derogatory publicity concerning L. Ron Hubbard, Mary Sue Hubbard and/or various Churches of Scientology.

F. He generated adverse publicity concerning the suit to discredit L. Ron Hubbard, Mary Sue Hubbard and/or the religion of Scientology in order to improve the position of his clients in his 'Scientology litigation' and as a means

of obtaining media exposure for his hostile and unfavorable views of L. Ron Hubbard, Mary Sue Hubbard and/or Scientology.

73. On information and belief: In engaging in the acts described in this Fourth Cause of Action, Flynn acted maliciously and with ulterior purposes and to gain collateral advantages which included: (a) to induce a financial settlement or recovery on behalf of Flynn's clients suing Mr. and Mrs. Hubbard and/or various Churches of Scientology; (b) to obtain a large default judgment for himself against Mr. Hubbard without ever being put to the burden of proving the allegations in his complaint; and (c) to place on the public record hostile and defamatory statements about L. Ron Hubbard, Mary Sue Hubbard and/or Scientology, in order to discredit them and/or poison the public's mind against them, thus improving his overall position in his Scientology litigation.

74. As a direct and proximate result of Flynn's abuse of process, Counterclaimant has been damaged through suffering emotional distress, including anxiety about her means of support and public humiliation, and through having to provide attorneys fees and other costs to move to intervene as defendant in the Flynn suit in order to protect her own good name and reputation and to protect her husband's assets and income on which she is dependent for support and in which she has an interest as a legatee.

75. Because Flynn's conduct was malicious, Counterclaimant is entitled to punitive damages.

WHEREFORE, Counterclaimant demands and prays judgment against Flynn as follows:

1. Compensatory damages in the amount of \$3 million on the first cause of action (malicious prosecution);
2. Punitive damages in the amount of \$3 milion on the first cause of action (malicious prosecution);
3. Compensatory damages in the amount of 3 million on the second cause of action (abuse of process - probate suit);
4. Punitive damages in the amount of \$3 milion on the second cause of action (abuse of process -- probate suit).
5. Compensatory damages in the amount of \$1 million on the third cause of action (libel);
6. Punitive damages in the amoiant of \$1 million on the third cause of action (libel);
7. Compensatory damages in the amount of \$1 million on the fourth cause of action (libel);
8. Punitive damages in the amount of \$1 million on the fourth cause of action (libel);
9. Compensatory damages in the amount of \$3 million on the fifth cause of action (abuse of process -- Flynn suit);
10. Punitive damages in the amount of \$3 million on the fifth cause of action (abuse of process -- Flynn suit);
11. Costs of this action.

DATED: September 30, 1983

Respectfully submitted,

BARRETT S. LITT
MICHAEL S. MAGNUSON
Law Offices of Barrett S. Litt
617 S. Olive, Suite 1000
Los Angeles, California 90014
(213) 623-7511

HARVEY SILVERGLATE
DAVID J. FINE
Silverglate, Gertner,
Baker and Fine
88 Broad Street
Boston, Massachusetts 02110
(617) 542-6663

Attorneys for Intervenor
Mary Sue Hubbard

DEMAND FOR JURY TRIAL

Counterclaimant Mary Sue Hubbard demands a jury trial on
her counterclaim.

DATED: September 30, 1983

Respectfully submitted,

BARRETT S. LITT
MICHAEL S. MAGNUSON
Law Offices of Barrett S. Litt
617 S. Olive, Suite 1000
Los Angeles, California 90014
(213) 623-7511

HARVEY SILVERGLATE
DAVID J. FINE
Silverglate, Gertner,
Baker and Fine
88 Broad Street
Boston, Massachusetts 02110
(617) 542-6663

Attorneys for Intervenor
Mary Sue Hubbard

1 (4) While Mr. Flynn or his above-named associates may
2 not act as counsel for petitioner, as explained in paragraph
3 2 above, he or they may assist petitioner and his counsel in
4 the preparation of petitioner's case and may attend deposi-
5 tions in the capacity of an advisor to the petitioner but
6 not as petitioner's attorney.

7 The matter was also raised at the hearing of whether or
8 not attorney Michael J. Flynn, in being granted access to
9 discovery material in this case, is bound by the previously
10 entered order of this court sealing disclosure and use of
11 discovery obtained in this case. The court orders that
12 Mr. Flynn and his associates are bound by that order and
13 instructs Mr. Flynn and his associates to comply with it.
14 This order was verbally communicated to Mr. Flynn at the
15 above-hearing, and he expressed his willingness to follow
16 it.

17 DATED: MAR 22 1983

J. DAVID HERNIGAN

JUDGE OF THE SUPERIOR COURT

LAW OFFICES
CHEONG & DENOVE
CENTURY CITY NORTH, SUITE 340
10100 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067
(213) 277-4857

FILED
RIVERSIDE COUNTY

NOV 10 1992

Attorneys for Petitioner RONALD E. DeWOLF

By WILLIAM B. COHEN, CLAY
W. B. Cohen Clerk
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

In re the Estate of

L. RON HUBBARD, ✓

A Missing Person.

CASE NO.

PETITION FOR APPOINTMENT OF
TRUSTEE AND FOR ORDER FOR
FILING OF PETITION AND FIXING
DATE OF HEARING

[Probate Code Sec. 260 et seq]

COMES NOW RONALD E. DeWOLF, and petitions the Court as follows [as used herein, the term "absentee" shall mean and refer to the "missing person" as defined at Probate Code Section 260]:

1. Petitioner resides at 1401 East Long Street, Carson City, Nevada 89701. Petitioner is the oldest son of L. Ron Hubbard, having been born on May 7, 1934 in Encinitas, California to L. Ron Hubbard and Margaret Louise Grubb Hubbard. Petitioner changed his name from L. Ron Hubbard, Jr. to Ronald E. DeWolf in 1972. The allegations set forth in this Petition are supported in detail in the attached "Declaration" of Ronald E. DeWolf, herewith made a part hereof.

Notice

☒ Filed

☐ Tested & Mailed

Deputy Clerk

EXHIBIT D

Date of Hearing DEC 9 1992
On Calendar ✓
Notice to Counsel F. Invels

1 2. The absentee, L. Ron Hubbard, has been absent
2 and unheard from since March 1980 from his last and usual
3 place of abode in Hemet, California. The absentee's pre-
4 sent wife, former wives, children, relatives, friends and
5 acquaintances, attorneys and accountants, have not spoken
6 with, met or heard from the absentee since March 1980.
7

8 3. The absentee, if not deceased, is presently 71 :
9 years of age having been born on March 13, 1911 in Tilden, Nebraska. The
10 absentee is the infamous, internationally known founder of,
11 and absolute controller of the Church of Scientology and its
12 various corporate entities including the Church of Sci-
13 entology of California, (California), a corporation having a
14 principal place of business in Los Angeles, California.
15 Until March 1980, the absentee controlled all Scientology
16 organizations with total and complete dictatorial power
17 through the use of unlawful, illegal and oftentimes criminal
18 means as hereinafter more fully set forth.
19

20 4. The following is a list of the absentees'
21 living children:

- 22 1) Petitioner, Ronald DeWolf, son of L. Ron
23 Hubbard and Margaret Louise Grubb.
24 2) Catherine M. Hubbard, daughter of L. Ron
25 Hubbard and Margaret Louise Grubb, born
26 January 16, 1936 at New York City.
27 3) Alexis Hollister Connolly, daughter of L.
28 Ron Hubbard and Sarah Northrup Hubbard,

1 born March 8, 1950 at Point Pleasant, New
2 Jersey.

3 4) Diana Horowich Hubbard, daughter of Mary
4 Sue Hubbard and L. Ron Hubbard, born
5 September 24, 1957 at St. John's Wood,
6 London, England.

7 5) Suzzette Hubbard, daughter of L. Ron
8 Hubbard and Mary Sue Hubbard, born in
9 early summer, 1957 in Washington, D.C.

10 6) Arthur Hubbard, son of L. Ron Hubbard and
11 Mary Sue Hubbard born in 1958 in Washington,
12 D.C.

13 5. The absentee has lived a life characterized by
14 severe mental illness and physical disease, consistent
15 failure, and the use of false and fraudulent, oftentimes
16 criminal means, to cover up these failures and to acquire
17 wealth, fame and power in order to destroy his perceived
18 "enemies". The absentee's life consists in part of the
19 following: (1) He left or flunked out of three high schools;
20 (2) He misrepresented his age to the United States Marines
21 where he was subsequently asked to leave for unknown reasons;
22 (3) flunked out of George Washington University, after three
23 semesters; (4) He commenced a career as a science fiction
24 writer for pulp magazines; (5) He attempted to acquire fame
25 by making false claims concerning participation in scien-
26 tific and explorational expeditions which he sent to Who's
27 Who in America at various times; (6) He became involved in
28 occult practices as an adherent to the cult of Aleister

1 Crowley called the "OTO"; (7) He generally engaged in
2 perverse, abusive and bizarre practices such as "abortion
3 rituals" with his first wife, Margaret Louise Grubb;
4 (8) During World War II while serving in the Navy, the
5 absentee was relieved of duty on numerous occasions, reprimanded,
6 declared unfit for duty, apparently concealed a
7 gasoline bomb on board the U.S.S. Algol in order to avoid
8 combat, and in September 1945 became an in-patient for
9 psychiatric and physical disorders including duodenal ulcers
10 at the Oak Knoll Military Hospital for a period of more than
11 three months.

12
13 6. At the conclusion of World War II and after
14 his discharge from the Oak Knoll Military Hospital, the
15 absentee's physical and mental health continued to deteriorate.
16 This deterioration was reflected by the absentee's continued
17 requirement for psychiatric treatment, suicidal tendencies
18 and ideation, drug addiction, venereal disease and impotency,
19 wife beating, bizarre "black magic" occult practice, forgery,
20 writing bad checks, and miscellaneous fraudulent activities
21 including bigamy. In 1947, the absentee defrauded John W.
22 Parsons of approximately \$20,000.00 in cash, became involved
23 in a bigamous marriage with Parson's girlfriend, Sarah
24 Northrup, on August 10, 1946 at Chestertown, Maryland, while
25 he was still married to Margaret Louise Grubb. The absentee
26 did not secure a divorce from Margaret until December 24,
27 1947 at Port Orchard, Washington.

28 / / /

1 7. Between 1947 and 1970, the absentee published
2 numerous books, periodicals, and news bulletins, copyrighted
3 in his name and published by the Church of Scientology,
4 which publications grossly misrepresented his background,
5 including false claims that he was a graduate of George
6 Washington University, a medical doctor, a nuclear physicist,
7 a graduate of Princeton University, a war hero, having
8 served four years of combat in the United States Navy who
9 was crippled and blinded as a result of his war service, and
10 who had done approximately 20 years of extensive research
11 into "case studies" that were discussed in his various
12 publications. In fact, between 1946 until his disappearance
13 in March 1980, the absentee suffered from paranoid schizo-
14 phrenia, was sought after by numerous state and federal
15 agencies, has been the target of numerous lawsuits through-
16 out the world, and has used the Church of Scientology to
17 perpetrate continued fraudulent and oftentimes criminal
18 schemes, including grossly inaccurate misrepresentations
19 concerning his physical and mental health.
20

21 8. At various times, between 1946 and March 1980,
22 the absentee demonstrated numerous indications for severe
23 mental illness and legal incompetency including the creation
24 of extravagant plans and operations to burglarize, infil-
25 trate, "penetrate", and "take over" the United States Govern-
26 ment through such maniacal schemes as "Operation Snow White"
27 and numerous other such "operations". These were designed
28 to acquire "intelligence information" to take control of

1 in part by approximately 30,000 documents which are in the
2 possession of the petitioner and his counsel covering a
3 period of approximately 30 years wherein the absentee and
4 his third wife, Mary Sue Hubbard, using the Church of Scien-
5 tology as an agent, conspired to attack and destroy all of
6 his perceived "enemies" including hundreds of journalists,
7 former Church members, judges, lawyers and prosecutors.
8 Mary Sue Hubbard and eight of the absentee's highest agents
9 were convicted on or about November 1979 for a variety of
10 crimes pertaining to this scheme, including obstruction of
11 justice, perjury, kidnapping, burglary of the United States
12 Attorney General and the Internal Revenue Service, and
13 conspiracy to commit some of the foregoing crimes. Two
14 additional high level agents were convicted in 1981 of
15 similar crimes. The overall criminal conduct of the ab-
16 sentee reveals a condition of severe paranoia and incompetency.

17 9. Between approximately 1950 and his disap-
18 pearance in March 1980, the absentee routinely engaged in
19 elaborate "intelligence operations" to conceal the location
20 of his assets and the assets of the Church of Scientology,
21 over which he had total control, routinely utilized false
22 signatures and false records to conceal said assets and to
23 control the Church of Scientology, including the forgery of
24 corporate records, the requirement that all members of all
25 boards of directors of all Church of Scientology corpora-
26 tions sign undated resignations in advance, the use of
27 approximately 10 individuals who regularly forged his sig-
28 nature between the years 1965 and up to his disappearance in

March 1980, and the use of elaborate "operations" to conceal his location. Numerous assets were placed in the names of straws, some of whom were attorneys, millions of dollars in cash was couriered throughout the world, all as a result of the absentee's paranoid fears that there was an "international conspiracy" against him, led by approximately 12 international branches including the Rothschild and Rockefeller families and officials in the Bank of England.

10. Between approximately 1970 and March 1980, the absentee's health began to severely deteriorate. During that period of time, the absentee suffered from three pulmonary embolisms, severe and chronic arthritis, duodenal ulcers, chronic viral pneumonia, numerous broken bones from minor physical contact such as fracturing his wrist on one occasion when he attempted to swat a fly, and persistent suicidal inclinations. { Although the absentee has falsely represented his health condition to the public and to members of the Church of Scientology as being "perfect" in order to convince the public that Scientology and "Dianetics" are guaranteed to achieve perfect health, in fact the absentee has been seriously mentally and emotionally ill since at least 1945. } In October 1978, the absentee suffered from a severe pulmonary embolism at Hemet, California for which he was treated with electroshock and various medications, including Coumadin. On or about October 1978, the absentee almost died as a result of his severely debilitated physical and mental health, and he instructed his "personal medical

officer", one Kima Douglas, the person who cared for all of his physical and mental ministrations, to "bury him in the date fields" surrounding Hemet, California and "not tell anyone."

11. Between March 1980 and the present date, there has been no communication of any nature or description to any Church of Scientology official, relative, friend, acquaintance, attorney or accountant, including his children and his wife, Mary Sue Hubbard. The severely debilitated physical and mental health of the absentee, together with the absentee's mental incompetency and suicidal inclinations, together with the fact that numerous governmental agencies throughout the world are presently seeking his presence for pending grand juries, together with the absentees' psychiatric history support the conclusion that the absentee is now deceased or mentally incompetent and that his affairs are now being managed by unknown persons.

12. Between approximately October 1981 and up to and including the present date, there has been a continual dissipation of assets belonging to the absentee which includes the following:

- a) On or about March 1982, several officials of the Church of Scientology of California surreptitiously acquired all of the copyrights to all of the absentee's publica-

tions covering a period of approximately 30 years. These copyrights have an inestimable value and apply to virtually every publication ever issued by the Church of Scientology over the past 30 years but which are copyrighted under the personal name of L. Ron Hubbard, the absentee. In addition, the Church of Scientology and several officials have acquired all of the rights to the "E-Meter", which is a device developed by the absentee and used by Scientology in connection with its activities and production of income. The E-Meter rights have an inestimable value. These assets are located in California at the corporate headquarters of the Church.

b) On or about June 14, 1982, an individual approximately 20 years of age of Arabic extraction, attempted to deposit a check in the amount of \$2,000,000.00 in the Mid East Bank in New York City. Said check was drawn on an E.F. Hutton brokerage account of L. Ron Hubbard, the absentee, and made payable to an individual named Aquil Abdul Amiar. The bank upon which said check was to be collected, the New England Merchants Bank, conducted an

1 extensive investigation to obtain authori-
2 zation for said check from the absentee,
3 but was unable to. For a period of
4 approximately 10 days, said bank contacted
5 the highest officials of the Church of
6 Scientology, who provided said bank with
7 inconsistent, confusing and potentially
8 fraudulent instructions as to the source
9 and legitimacy of said check. During said
10 investigation, the bank learned that
11 Hubbard's original signature on a signa-
12 ture card of said account had been forged
13 by a Scientology official, and thereafter
14 froze said accounts. The petitioner is
15 presently unaware of the status of said
16 account but has learned that millions of
17 dollars were removed from said account
18 just prior to the discovery of the subject
19 \$2,000,000.00 check.

20 c) During the same period of time in June 1982,
21 the petitioner learned that an individual
22 named Jim Isaacson, representing himself
23 to be the personal financial representa-
24 tive of L. Ron Hubbard, attempted to sell
25 approximately \$1,000,000.00 of precious
26 stones belonging to the absentee on the
27 wholesale market in Los Angeles, Cali-
28 fornia. The petitioner believes that

1 officials of the Church of Scientology are
2 unlawfully in possession of the absentee's
3 accounts and are dissipating said assets.

4 d) Approximately 10 to 20 million dollars in
5 liquid assets of the absentee is controlled
6 and managed through several brokerage
7 accounts in Los Angeles including an E.F.
8 Hutton account. These accounts are being
9 managed by individuals who have routinely
10 forged the signature of the absentee over
11 the past several years. These individuals
12 live and work in the area of Los Angeles
13 and have control of approximately one
14 million dollars of valuable coins be-
15 longing to the absentee.

16
17 13. The present wife of the absentee, Mary Sue
18 Hubbard married the absentee in 1952 but agreed in writing
19 immediately prior to the marriage to divorce the absentee
20 whenever he desired.] Mary Sue Hubbard acted as the direct
21 agent of the absentee in all of his criminal and fraudulent
22 enterprises, was personally knowledgeable of the absentee's
23 severe mental illness, and she remained his agent until at
24 least Decemter 1978.] Mary Sue Hubbard has filed an af-
25 fidavit in connection with pending litigation stating under
26 the pains and penalties of perjury that she has not seen,
27 communicated with, or received any indirect communication
28 from the absentee since March 1980.

1 14. In September 1982, approximately 30,000 docu-
2 ments belonging to the absentee were surrendered to the
3 Clerk of the Los Angeles Superior Court in the case of
4 Church of Scientology v. Armstrong, Docket No. C 420 153.
5 These documents do not belong to the Church of Scientology.
6 The absentee entrusted said documents into the possession of
7 Gerald Armstrong, one of the absentee's closest and most
8 confidential aides, as the absentee's personal representative
9 in connection with the preparation of a biography. Said
10 documents have an inestimable value, and if possession of
11 said documents is obtained by Scientology, they will be
12 destroyed. The documents rightfully belong to the absentee,
13 the absentee's estate, or to Armstrong, but the Church of
14 Scientology as currently controlled by individuals adverse
15 to the interest of the absentee, is seeking to acquire con-
16 trol over said documents.

17
18 15. Control over the Church of Scientology and over
19 millions of dollars of the assets of the absentee is cur-
20 rently held by one David Miscavage, a 22 year old with a
21 9th grade education, who together with one James Isaacson
22 and others, have been forging the signature of the absentee
23 on numerous liquid asset accounts in the name of the absentee.
24 Over the past 8 years, approximately 10 individuals listed
25 in the attached Declaration of the petitioner have routinely
26 forged the signature of the absentee in connection with his
27 personal, financial and corporate affairs.

28 / / /

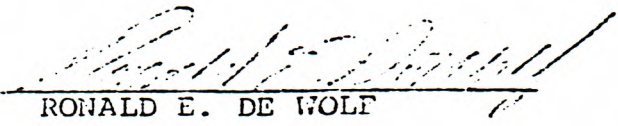
1 16. A substantial likelihood exists that unless a
2 Trustee is appointed to collect and hold the assets of the
3 absentee and to represent the absentee and his lawful heirs,
4 said assets will be dissipated, stolen and alienated, and
5 the interests of the absentee in various litigation throughout
6 the United States, including the Armstrong case, pending in
7 this Court, will not be protected.

8 17. Petitioner is prepared and willing to act as
9 Trustee to collect, hold and maintain the absentee's real and
10 personal property under the direction of this court. Petitioner
11 is a person entitled to participate in the distribution of the
12 estate of the absentee if said absentee were dead.

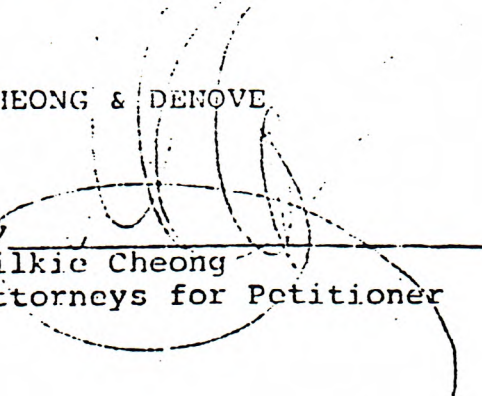
13 WHEREFORE, Petitioner prays that:

- 14 1. The court order this Petition filed;
15 2. This Petition be set for hearing not less than
16 ten (10) days from the date of the order as provided by law;
17 3. Notice of the hearing be given as provided by law;
18 4. Petitioner is appointed as Trustee of the estate
19 of L. Ron Hubbard, a missing person; and
20 5. Such other and further relief be granted as this
21 court may deem just and proper.

22 DATED: November 6, 1982

23 
RONALD E. DE WOLF

24 CHEONG & DENOVE

25
26 By 
27 Wilkie Cheong
28 Attorneys for Petitioner

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

-o0o-

JANE LEE PETERSON and
RICHARD J. PETERSON,
Plaintiffs,

vs.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,
Defendants.

ORIGINAL

Civil No. 81-3259-CBM

CAROL A. GARRITY and
PAUL GARRITY,
Plaintiffs,

vs.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,
Defendants.

Civil No. 81-3260-CBM

THOMAS JEFFERSON,
Plaintiff,

vs.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,
Defendants.

Civil No. 81-3261-CBM

DANA LOCKWOOD,
Plaintiff,

vs.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,
Defendants.

Civil No. 81-4109-CBM

CHURCH OF SCIENTOLOGY OF
CALIFORNIA,
Counterclaimant
Plaintiff,

vs.

MICHAEL FLYNN, THOMAS HOFFMAN,
THOMAS GREEN, KEVIN FLYNN,
Counterclaimant
Defendants.

DEPOSITION OF RONALD DE WOLF

May 26, 1983

Carson City, Nevada

REPORTED BY:

MARY E. BELL, CSR NO. 98

CAPITOL REPORTERS

OFFICIAL AND GENERAL COURT REPORTERS

820 ALHAMBRA BLVD. SACRAMENTO, CALIFORNIA 95816

108 W. TELEGRAPH, CARSON CITY, NEVADA 89701

EXHIBIT E

1 A. Well, the FBI came by the house, I think, what
2 was it now, in I believe it was December, last December
3 relating to my petition.

4 Q. But they were just asking you questions about
5 the allegations in the petition?

6 A. Of course the FBI, they don't answer questions,
7 they ask a lot of them. But it had to do with, I believe,
8 some of the checks and bank accounts that were listed in
9 the petition and I think what he had was a newspaper
10 article that quoted part of the petition of some sort
11 and I could only give him what was in the petition.

12 Q. That would be the \$2 million check off of the
13 Bank of New England or the Bank -- that check?

14 A. Yeah. I believe it was mentioned a million and
15 a half dollar check, a half-million dollar check, I'm
16 not sure, but it came to \$2 million.

17 Q. That information, you had no personal knowledge
18 of those checks?

19 A. Correct.

20 Q. And that came into the petition through your
21 attorney, I presume?

22 A. Yes.

23 Q. That would be Michael Flynn or Wilkie Cheong?

24 A. I don't recall. Either one, probably Mr. Flynn.

25 Q. And you have no idea how you learned that
26 information about the checks?

1 A. No.

2 Q. You didn't give him that information?

3 A. No.

4 Q. Do you remember or know of any scientologists
5 or ex-scientologists that you spoke to that had any
6 information regarding those checks?

7 A. I don't believe so, no.

8 Q. And also there was I believe some allegations
9 regarding gemstones. Was that likewise just allegations?

10 A. That was I believe from Mr. Flynn. The FBI
11 didn't ask me about the gemstones.

12 Q. They were mainly interested in the check
13 incident?

14 A. Yeah.

15 Q. Did they to your knowledge address themselves
16 to any other part of the declaration or the petition,
17 I should call it?

18 A. No. They asked me if I knew anything about
19 Indian foods, which I didn't and something to do with the
20 United Arab Immigrant and I didn't know anything about that
21 either.

22 Q. Aquil Abdul Amiar?

23 A. Yeah, that's the fellow they asked about.

24 Q. According to the petition, it was a \$2 million
25 check.

26 A. Oh, it was? Okay. So what I did, I said, "Well,

1 here's all the information I have," and I just gave him
2 a copy of the petition.

3 Q. On the T.V. show you mentioned that there was
4 some manipulation of your father's estate where
5 investments were made in a Mafia organization or controlled
6 organization called Innercap. I didn't notice that in the
7 declaration.

8 A. I don't believe it's there. I haven't read the
9 declaration for some time, but I don't believe it's
10 there.

11 Q. This is new information?

12 A. Well, when we were in T.V. shows, I think it
13 was in Washington, D.C., we were sitting in the green
14 room and Mike Flynn and I and Van or Robert Young and
15 Harvey Silverburg, Silverblade, something like that, we
16 were sitting around talking about it and I was talking
17 about it and Mike started telling him, "Well, do you
18 know about this, this, and this," and he mentioned I believe
19 the Attorney General, State of Arizona, and Innercap or
20 Intericap, something like that.

21 Q. And Michael Flynn mentioned that they were
22 controlled by the Mafia?

23 A. Well, he said something about indictments coming
24 down on organized crime figures, but he didn't mention
25 anything about anybody specific.

26 Q. But you have no knowledge about Hubbard's estate

1 funds being invested in this organization?

2 A. No.

3 Q. There have been two affidavits basically filed
4 in this case, one being an earlier one and then after the
5 probate matter was filed, the probate affidavit was also
6 filed which contained a tremendous amount of additional
7 data that had never before been put in affidavit form and
8 filed with the court. Is there any reason why all this
9 information wasn't brought forward earlier?

10 A. I don't know.

11 Q. You had it supposedly. I mean, it's allegations
12 you're making about events that took place in the early
13 '50's, but yet we never hear about this basically until
14 the Chic article which came out in April of '82. Is there
15 any reason --

16 A. No, the Chic article came out earlier.

17 Q. February of '82. Is there any reason why all
18 this information was never mentioned by you in any
19 writings, affidavits, letters, never mentioned in your
20 testimony but only came forward in 1982?

21 A. I don't understand all of what you just said.

22 Q. You supposedly have known a lot of this
23 information about drug use, sexual acts, occult practices,
24 black magic, since the '50's?

25 A. Yes.

26 Q. Yet you have never mentioned them, never testified

1 and sit down and talk with him.

2 Q. Have you had an opportunity to review the evidence
3 presented in the probate case, the handwriting analysis,
4 the fingerprint analysis, the ink analysis?

5 A. Some of it, yes. But that's all furnished by
6 the other side and I haven't yet seen our response which
7 should be in by June 10th.

8 Q. You know that your side or you have always
9 through your attorney the opportunity to take our materials
10 and have your own analysis done; is that correct?

11 A. Correct. I think that is being done now or
12 has been done.

13 Q. If the analysis of your attorneys through your
14 experts state that the handwriting is L. R. Hubbard's, that
15 the ink on the paper was placed in 1983, the thumbprint
16 put over the ink is that of L. R. Hubbard, Sr., would you
17 then believe that he is alive?

18 A. Well, I may not, but I would go with whatever
19 the court decision said. That would be up to the court.
20 I mean, you're putting it at the level of what our experts
21 would say. I would forego with the court decision, whether
22 he's missing or not, and that's the exact extent of the
23 petition as it stands now.

24 Q. A point I've never been really clear on. Have
25 you actually seen him since 1959?

26 A. No.

1 A. Because they kept asking.

2 Q. That's the only reason?

3 A. If they quit asking I would probably quit. The
4 point is simply I still feel I've been trying -- various
5 individuals within and around the organization, whether
6 they are attached to it or not, try to keep me kind of
7 quiet and I don't care to keep quiet.

8 Q. But no one is putting any pressure or thoughts
9 upon you to keep you quiet?

10 A. And I also feel -- not since the petition, no.

11 Q. You have complete freedom of speech?

12 A. I do now and one of the reasons I'm willing to go
13 with the press is it's to my own feeling a good,
14 predominant protection. It's kind of hard to do funny
15 little things with all kinds of press and media over your
16 picture.

17 Q. Is that the reason you're doing it?

18 A. That's one reason.

19 Q. Does your attorney know you're meeting the press
20 on all these occasions and discussing the case on
21 national television?

22 A. I think so.

23 Q. Isn't it a fact that Michael Flynn set up the
24 20/20 interview with Gordon Freedman?

25 A. I don't know who set it up.

26 Q. Haven't you met with members of the press at

1 Michael Flynn's office?

2 A. I believe so, yes, back in Boston a few weeks
3 ago.

4 Q. Basically it's Michael Flynn who drafts these
5 petitions that go into the court and then all of a sudden
6 go straight to the media?

7 A. I don't know about going straight to the media.
8 I do know that he is in the main prepared and/or his office
9 or what have you has prepared quite a bit of it.

10 Q. And a lot of it is just his own information and
11 not yours?

12 A. Information concerning my father's life and my
13 life, yes, but I think it's put in a more coherent form.

14 Q. So anything after '59 is just stuff that you have
15 no direct knowledge of and it's just stuff that you learned
16 through Michael Flynn and third party sources?

17 A. Correct. My personal knowledge ends November
18 23rd, 1959, insofar as my scientology, within the
19 organization goes.

20 Q. You talk about your father's extreme paranoid
21 condition between '75 and '78 to conceal his location?

22 A. That's information and belief.

23 Q. But you just testified that you have not seen
24 him since 1959?

25 A. That's personal knowledge, correct.

26 Q. So it doesn't seem to be an extreme paranoid

1 A. Well, I don't know who did what and where in
2 actual facts.

3 Q. But it is a fact that if you want a question
4 answered about what's happening in the case or who's doing
5 what, Michael Flynn is the man to talk to before Wilkie
6 Cheong?

7 A. Depending upon what it's about.

8 Q. I mean declarations, motions, strategy, the
9 important decisions in the case, not who is going to appear
10 where.

11 A. Again, I just have to say my attorneys.

12 Q. Which includes Wilkie Cheong and Michael Flynn?

13 A. Correct.

14 Q. Did you catch that?

15 A. Yes.

16 Q. You sort of gave it to the reporter.

17 Let's adjourn this thing. I'm after 4:00. I'm
18 treading on borrowed time.

19 -oOo-

20
21
22 RONALD DE WOLF

23 SUBSCRIBED AND SWORN TO BEFORE ME

24 this _____ day of _____, 1983.

25
26 _____
NOTARY PUBLIC

1 STATE OF NEVADA)
2) ss.
3 DOUGLAS COUNTY)

4 I, MARY E. BELL, a Notary Public in and for the
5 County of Douglas, State of Nevada, do hereby certify:

6 That on Thursday, the 26th day of May, 1983, at
7 9:08 a.m. of said day, at 108 West Telegraph Street,
8 Carson City, Nevada, personally appeared RONALD DE WOLF,
9 who was duly sworn by me to testify the truth, the whole
10 truth and nothing but the truth, and thereupon was deposed
11 in the matter entitled herein;

12 That said deposition was taken in verbatim
13 stenotype notes by me, a Certified Shorthand Reporter, and
14 thereafter transcribed into typewriting as herein appears;

15 That the foregoing transcript, consisting of pages
16 1 through 192, inclusive, is a full, true and correct
17 transcription of my stenotype notes of said deposition.

18 DATED at Carson City, Nevada, this 9th day of
19 June, 1983.

20
21 Mary E. Bell
22 MARY E. BELL, CSR NO. 98



1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF RIVERSIDE
3
4

82B

5 In re the Estate of)
6 L. RON HUBBARD,) PROBATE NO. 47150
7 A Missing Person.)
8)
9)
10)
11)

12 REPORTER'S TRANSCRIPT

13 Proceedings before The Honorable J. David Hennigan, Judge of
14 the Superior Court of the State of California, County of River-
15 side, Department XII, on Thursday, March 17, 1983.

16 APPEARANCES OF COUNSEL:

17 For the Petitioner: CHEONG & DENOVE
18 Attorneys at Law
19 By: WILKIE CHEONG, ESQ.
20 Century City North, Suite 340
10100 Santa Monica Boulevard
Los Angeles, California 90067

21 For the Respondent, BARETT S. LITT and
22 Mary Sue Hubbard: MICHAEL S. MAGNUSON
23 Attorneys at Law
24 The Oviatt Building
617 South Olive - Suite 1000
Los Angeles, California 90014

25
26 BONNIE J. REYNOLDS, CSR NO. 2490
27 Official Court Reporter
3536 Tenth Street - Ste. 160
28 Riverside, California 92501
(714) 787-6656

COPY

1 Hubbard. He has represented in the letter dated December 10,
2 1982, and in a letter dated -- well, in a letter dated December
3 10, '82, that he represents L. Ron Hubbard for the purposes of
4 these proceedings and yet --

5 THE COURT: He's never appeared in these proceedings.

6 MR. FLYNN: He's never appeared in these proceedings.
7 He is also in the position of having apparently, according to a
8 letter dated June 25, 1982, prepared a will and inter vivos
9 trust.

10 Theoretically, the three witnesses to that will could
11 resolve all the matters before this Court, and yet those three
12 witnesses have not been produced by this Court nor has
13 Mr. Lenske produced them.

14 In addition to that, he has represented both the
15 Church of Scientology and L. Ron Hubbard, who he has never
16 consulted with and never met and the transfer of potentially
17 hundreds of millions of dollars of assets from L. Ron Hubbard
18 to a non-religious corporation where he also represents the
19 principals, the people in that non-profit religious corpora-
20 tion.

21 I would submit to the Court and represent to the
22 Court that the evidence of the representations that I have
23 just made is overwhelming.

24 Now, what the Court is confronted with at this stage
25 of the proceedings is a plethora of ambiguities in vague and
26 undefined interest on a lot of parties, not only Michael Flynn
27 and Ron DeVolfe, but also of Mr. Litt and Mary Sue Hubbard,
28 also of Sherman Lenske and L. Ron Hubbard, also of potential

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I, BONNIE J. REYNOLDS, a Certified Shorthand
Reporter, do hereby certify:

That on March 17, 1983, in the County of Riverside,
State of California, I took in shorthand a true and correct
report of the proceedings had in the above-entitled cause;
and that the foregoing is a true and accurate transcription
of my shorthand notes, taken as aforesaid, and is the whole
thereof.

DATED: Riverside, California, March 30, 1983.



BONNIE J. REYNOLDS, CSR NO. 2490

JUN 1983

FILED
RIVERSIDE COUNTY

JUN 28 1983

WILLIAM E. CONERLY, Clerk

R. Flores

R. Flores
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

In Re Estate of) CASE NO. 47150
L. RON HUBBARD,) (Probate)
A Missing Person.) STATEMENT OF DECISION

The court makes the following Statement of Decision:

The declaration of L. RON HUBBARD, dated May 15, 1983, is in Mr. Hubbard's handwriting with his fingerprint attached, and was executed after this action began.

The lack of information as to Mr. Hubbard's present residence address is a matter of choice by Mr. Hubbard.

Mr. Hubbard's business affairs are being taken care of to the satisfaction of Mr. Hubbard, and are not in need of supervision by this court.

Mr. Hubbard's constitutional right of privacy gives him a right to keep his residence a secret from the public and, therefore, he is not a Missing Person within the meaning of Probate Code 260.

Dated: June 27, 1983

J. DAVID HENNIGAN

J. DAVID HENNIGAN
JUDGE OF THE SUPERIOR COURT

1 Law Offices of Cheong and Denove
2 Century City North, Suite 340
3 10100 Santa Monica Boulevard
4 Los Angeles, California 90067
5 (213) 277-4857

6 Attorneys for Petitioner
7 RONALD DEWOLF

8 Law Offices of Barrett S. Litt
9 617 South Olive, Suite 1000
10 Los Angeles, California 90014
11 (213) 623-7511

12 Attorneys for Respondent
13 MARY SUE HUBBARD

FILED
RIVERSIDE COUNTY

JAN 4 1993

By WILLIAM E. CONERLY, Clerk
William E. Conerly Deputy
J. Penner

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF RIVERSIDE

16 In Re the Estate of	)	No. 47150 (Probate)
17 L. RON HUBBARD.	)	AMENDED ORDER THAT LETTERS
	)	ROGATORY ISSUE FOR TAKING
	)	DEPOSITIONS OUTSIDE OF
	)	CALIFORNIA [C.C.P. §§218(b),
	)	2024].

18 The motion of Petitioner, RONALD E. DeWOLF, for an order
19 that letters rogatory issue for the taking of the depositions
20 of the Keeper of Records of the New England Merchants Bank
21 and the Keeper of the Records of E. F. Hutton & Company, upon
22 oral deposition, and for the production by said deponents of
23 certain records and documents, came on regularly for hearing
24 on December 30, 1982.

25 On Proof being made to the satisfaction of this court
26 that said deponents are out of state and are necessary and
27 material witnesses in this proceeding,

28 IT IS ORDERED that letters rogatory issue out of and
under the seal of this court addressed to "the appropriate

1 Judicial Authority in the Commonwealth of Massachusetts" to
2 take the deposition of the Keeper of Records of the New
3 England Merchants Bank upon oral examination on January 21,
4 1983, at the law offices of Michael J. Flynn, 12 Union Wharf,
5 Boston, Massachusetts, commencing at 10:00 a.m., and to have
6 said deponent produce the records and documents described
7 below.

8 IT IS FURTHER ORDERED that letters rogatory issue out of
9 and under seal of this court addressed to "the appropriate
10 Judicial Authority in the Commonwealth of Massachusetts" to
11 take the deposition of the keeper of Records of E. F. Hutton
12 & Company, upon oral examination on January 21, 1983, at the
13 law offices of Michael J. Flynn, 12 Union Wharf, Boston,
14 Massachusetts, commencing at 2:00 p.m., and to have said
15 deponent produce the records and documents described below.

16 Said oral depositions are limited to matters showing: 1)
17 that L. Ron Hubbard is or is not a missing person; 2) that
18 L. Ron Hubbard has personally signed legal documents on his
19 own behalf; and 3) the current address or whereabouts of
20 L. Ron Hubbard.

21 The documents to be produced are limited to all records,
22 applications, papers, memoranda, letters, notes and other
23 documents which: 1) contain the address of L. Ron Hubbard;
24 2) contain the signature of L. Ron Hubbard; 3) constitute
25 communications to or from L. Ron Hubbard personally; and 4)
26 constitute powers of attorney or other forms of authorization
27 signed by L. Ron Hubbard. Any such documents which contain
28

1 information regarding the amount of assets, monies or other
2 property shall have such amounts expurgated prior to produc-
3 tion.

4 This order supercedes the previous order of this court,
5 signed on December 30, 1982, issuing letters rogatory for the
6 depositions of the New England Merchants Bank and
7 E. F. Hutton & Company.

8
9 Dated: JAN - 3 1983

J. DAVID HENNIGAN
JUDGE OF THE SUPERIOR COURT

1 Law Offices of Barrett S. Litt
2 617 South Olive Street, Suite 1000
3 Los Angeles, California 90014

4 (213) 623-7511

5 Attorneys for Respondent
6 MARY SUE HUBBARD

FILED
RIVERSIDE COUNTY

DEC 16 1982

WILLIAM E. CONERLY, Clerk
By W. E. Conerly Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF RIVERSIDE

10
11 In re the Estate of)
12)
13 L. RON HUBBARD.)
14)

Case No. 47150

ORDER.

15 On December 8, 1982, there came on for hearing before
16 this court the following motions:

17 (1) Petitioner's motion for the issuance of letters
18 rogatory.

19 (2) Petitioner's oral motion to file verification of
20 petition.

21 (3) Respondent Mary Sue Hubbard's motion to compel the
22 deposition of Petitioner Ronald DeWolf.

23 (4) Respondent Mary Sue Hubbard's motion to strike the
24 petition as sham.

1
2 (5) Respondent Mary Sue Hubbard's motion to strike the
3 petition, declaration, and exhibits, or portions
4 thereof.

5 (6) Respondent Mary Sue Hubbard's demurrer to the peti-
6 tion.

7 Wilkie Cheong appeared on behalf of petitioner Ronald
8 DeWolf and Barrett S. Litt appeared on behalf of respondent
9 Mary Sue Hubbard.

10 The court ruled on some of the above motions and took
11 others under submission as follows:

12 (1) Petitioner's motion for the issuance of letters
13 rogatory was denied as premature on the basis of C.C.P.
14 §2016(a). Petitioner may refile such a motion at the appro-
15 priate time.

16 In the context of this motion for the issuance of
17 letters rogatory, the court took up related matters
18 concerning the scope and use of discovery. Discovery in this
19 matter at this stage is not for the purpose of inventorying
20 L. Ron Hubbard's assets or estate, but solely for the purpose
21 of establishing the elements contained in Probate Code §260.
22 Accordingly, financial discovery in this case, including
23 requests for documents, is limited to items which show that:
24 L. Ron Hubbard is a missing person within the meaning of
25 Probate Code §260; L. Ron Hubbard is or was a resident of the
26 State of California, County of Riverside; L. Ron Hubbard owns
27 real or personal property in the State of California; and
28

1 L. Ron Hubbard's estate requires attention, supervision and
2 care.
3

4 The parties have agreed in principle to the limitation
5 of the use of discovery obtained in the course of this case.
6 None of the discovery taken in this case, whether in the form
7 of depositions, interrogatories, production of documents,
8 admissions, discovery stipulations, exhibits or other types
9 of discovery, shall be filed by either party. In the event
10 that motions are filed which refer to discovery materials,
11 only those portions of the discovery directly referred to and
12 cited in the motions or related pleadings shall be filed as
13 exhibits to the motion, and they shall be filed under seal.
14 Further, neither party shall disclose the original or any
15 copies of any such discovery to any persons whatsoever except
16 insofar as is necessary in good faith to prepare and litigate
17 this action. Specifically, but not by way of limitation,
18 such discovery shall not be disclosed to any member of the
19 press or news media, and shall not be disclosed to attorneys
20 representing any parties who are in litigation with Mary Sue
21 Hubbard, L. Ron Hubbard, Ronald DeWolf, or any Scientology
22 organization (except that, with respect to Massachusetts
23 attorney Michael Flynn, the limitations with respect to him
24 are discussed in the next paragraph). Further, there shall
25 be no use of discovery obtained in this case in any other
26 proceedings, either directly or indirectly.
27
28

1
2 Respondent Mary Sue Hubbard also requested, as part of
3 her opposition to the motion for issuance of letters roga-
4 tory, that Massachusetts attorney Michael Flynn and his asso-
5 ciates be disqualified and excluded from participating,
6 appearing or associating as counsel for petitioner in the
7 noticed depositions referred to in the letters rogatory, or
8 in the case in general, on the ground that Mr. Flynn and his
9 associates have a conflict of interest with L. Ron Hubbard
10 and are adverse to Mr. Hubbard. That request is denied at
11 this time. The limitations on discovery referred to in the
12 preceeding paragraph, however, do apply to Mr. Flynn and his
13 associates in that discovery taken in this case may not be
14 disclosed to them except to the extent that they are asso-
15 ciated by petitioner ~~for Massachusetts depositions~~, and, to
16 the extent that they become privy to discovery material in
17 this case, they are bound by the restrictions on its use and
18 dissemination contained in the foregoing paragraph. This is
19 not a restriction on petitioner's, or his counsel's, ability
20 to consult with Mr. Flynn or to receive information from him,
21 but is only a restriction on the disclosure and use of disco-
22 very taken in this case in connection with Mr. Flynn and his
23 associates.

24 (2) Petitioner Ronald DeWolf's oral motion to file a
25 verification to his petition is granted. The court agreed to
26 entertain application by Respondent Mary Sue Hubbard for
27
28

1 attorneys, fees related to preparation of the legal argument
2 regarding the defect of lack of verification.
3

4 (3) Petitioner Mary Sue Hubbard's motion to compel the
5 deposition of Ronald DeWolf was granted and the court signed
6 an order, which was not filed, for delivery to Mr. DeWolf.
7 It was and is ordered that Mr. DeWolf appear for deposition
8 at 10:00 A.M. on December 11, 1982, at the Law Offices of
9 Barrett S. Litt, unless arrangements are made for the deposi-
10 tion to be held elsewhere, and further ordered that, if said
11 deposition requires more than one day, the deposition shall
12 be continued to a mutually agreed upon date during the week
13 of December 27, 1982.

14 (4) Respondent Mary Sue Hubbard's motion to strike the
15 petition as sham was heard by the court. ~~The court observed~~
16 ~~that, while the face of the petition itself evidences that~~
17 ~~Ronald DeWolf is hostile to and estranged from his father,~~
18 ~~the court does not feel that this is sufficient grounds on~~
19 ~~which to grant the motion.~~ That motion is denied at this
20 time.

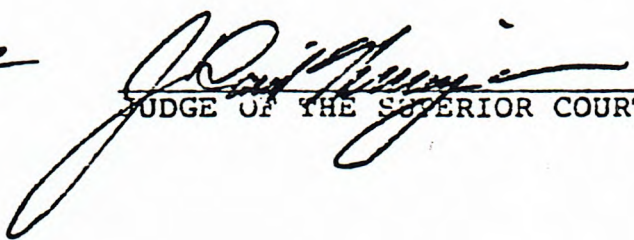
21 (5) Respondent Mary Sue Hubbard's motion to strike the
22 petition, declaration, and exhibits or portions thereof was
23 argued before the court. However, since the court had not
24 had the opportunity to review the pleadings on that motion,
25 it was taken under submission by the court.

26 (6) Respondent Mary Sue Hubbard's demurrer was argued
27 before the court. However, since the court had not had the
28

1 opportunity to review the pleadings on the demurrer, that
2 matter was taken under submission by the court.
3
4

5 Dated:

Dec. 15, 1982


JUDGE OF THE SUPERIOR COURT

1 Law Offices of Barrett S. Litt
2 617 South Olive Street, Suite 1000
3 Los Angeles, California 90014

FILED
RIVERSIDE COUNTY

4 (213) 623-7511

JUL 19 1983

5 Attorneys for Respondent
6 MARY SUE HUBBARD

WILLIAM E. CONERLY, Clerk
by C. Johnson C. Johnson
Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF RIVERSIDE

10
11 In re the Estate of) Case No. 47150
12 L. RON HUBBARD.) ORDER OF CONTEMPT
13

14 The contempt proceedings against Ronald E. DeWolf,
15 Wilkie Cheong and Michael J. Flynn came regularly for
16 hearing by the court on July 8, 1983, pursuant to the order
17 to show cause issued by this court June 13, 1983. Citees
18 Ronald E. DeWolf and Michael J. Flynn were represented by
19 Wilkie Cheong who also appeared on his own behalf.
20 Evidence, both oral and documentary, having been received
21 and considered, the matter having been argued and submitted,
22 and good cause appearing therefore,

23 IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

24 1. With the concurrence of counsel for respondent,
25 the contempt charges against Ronald E. DeWolf are dismissed.

26 2. Upon the request of counsel for respondent, the
27 contempt charges against Wilkie Cheong are dismissed.
28

1 3. Michael J. Flynn is guilty of contempt of court
2 for failure to obey the order of this court made on December
3 16, 1982 in that he knew that the foregoing order prohibited
4 disclosure of information obtained through discovery in this
5 proceeding to attorneys representing parties involved in
6 litigation against Mary Sue Hubbard, L. Ron Hubbard or any
7 Scientology organization, that he had the ability to comply
8 with the foregoing order and willfully disobeyed the
9 foregoing order by (a) making such information available to
10 counsel for defendant in Church of Scientology v. Armstrong,
11 No. C 420153 and (b) making information available to counsel
12 involved in Nebraska State Court litigation involving the
13 Church of Scientology.

14 It is further adjudged, ordered and decreed that
15 Michael J. Flynn is to be punished for the foregoing
16 contempt by a fine of \$250.00, said fine payable within 30
17 days of the date of this order. Pursuant to agreement at
18 the July 8 hearing, service of a copy of this order upon
19 Wilkie Cheong will be sufficient service upon Mr. Flynn.

20
21 DATED:

JUL 19 1983

J. David Hennigan
JUDGE OF THE SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

CHURCH
MASTER

MICHAEL J. FLYNN

VS

CHURCH OF SCIENTOLOGY
OF CALIFORNIA, INC., ET AL

NO. 54258

BEFORE: ZOBEL, J.

MOTION TO DISMISS

APPEARANCES:

DAVID BANASH, ESQUIRE, Hollingsworth Associates,
10 Union Wharf, Boston, Massachusetts 02109,
for the Plaintiff.

ERIC LIEBERMAN, ESQUIRE, Robinowitz, Boudin, Standard,
Krinsky & Lieberman, 30 East 42d. Street,
New York, New York 10017, for the Defendant.

COURTHOUSE
PEMBERTON SQUARE
BOSTON, MASSACHUSETTS
ROOM 243
OCTOBER 12, 1983

1 THE CLERK: Michael J. Flynn versus
2 the Church of Scientology of California. Mr. Banash
3 and Ms. Gertner.

4 THE COURT: We will have only one
5 counsel on each side argue, so why don't you make
6 whatever arrangements you want.

7 Who is for the plaintiff?

8 MR. BANASH: I am, Your Honor,
9 David Banash.

10 THE COURT: And for the defendant?

11 MR. LIEBERMAN: Eric Lieberman,
12 Your Honor.

13 MR. BANASH: I don't believe that
14 Mr. Lieberman is a member of the Massachusetts --

15 MR. LIEBERMAN: I am.

16 MR. BANASH: He is. I have no
17 objection.

18 THE COURT: Look, gentlemen, let me
19 tell you one thing and that is that counsel, if they
20 want to discuss, they can have the whole range of any
21 hallway in the courthouse, but when they are in here
22 in front of me, they talk to me and not to each other.

23 This case is plainly engendered a
24 good deal of irritated feeling between counsel, between
25 parties; but whatever your feelings, whatever your

1 irritations, you drop them when you come up in front
2 of the bench.

3 Mr. Lieberman, what's going on?

4 MR. LIEBERMAN: What, Your Honor?
5 I'm not sure what the question is. I know nothing
6 about the stenographer.

7 MR. SILVERGLATE: Oh, may we have
8 permission to have the stenographer take this,
9 Your Honor?

10 THE COURT: Why?

11 MR. SILVERGLATE: Just for a record
12 of this transcript. If Your Honor doesn't want it,
13 it's fine. We've had a record of every --

14 THE COURT: You've divined my mind
15 very well, Mr. Silverglate. Thank you.

16 MR. SILVERGLATE: Shall we send the
17 stenographer out?

18 THE COURT: She may sit here but she
19 is not to take notes.

20 MR. SILVERGLATE: Okay.

21 MR. RANKIN: Your Honor?

22 THE COURT: Yes.

23 MR. RANKIN: My name is Charles Rankin.
24 I represent a fifth defendant in the matter;
25 Mr. Lieberman represents the other four. I represent

1 the defendant Kevin Tighe. Given the papers that
2 have been filed, I suspect that Mr. Lieberman's
3 argument will cover all the points I wish to say.
4 I did want to tell Your Honor that in case there is
5 some particular interest in Mr. Tighe that has to be
6 asserted at a later point.

7 THE COURT: How does your client
8 spell his name?

9 MR. RANKIN: T-i-g-h-e.

10 THE COURT: Mr. Banash.

11 MR. BANASH: Yes, Your Honor.

12 THE COURT: Why should not the Court
13 give you a choice of three possible routes: dismissal
14 with prejudice; denial of the Motion to Dismiss; or
15 denial of the Motion to Dismiss with a Stay of the
16 Federal Court proceedings?

17 MR. BANASH: Well, I'll address them
18 in order, Your Honor.

19 Denial with prejudice --

20 THE COURT: Excuse me. I don't mean
21 to interrupt you. In the course of your discussion
22 you might wish to indicate, if you wish to, which of
23 the three is the most acceptable to you.

24 MR. BANASH: Denial with prejudice,
25 Your Honor, would severely affect our federal case.

1 We believe that the Massachusetts case law -- there
2 is some case law to the effect that it might
3 collaterally estop the plaintiff from suing in
4 Federal Court. The case law which has addressed
5 this issue, to my knowledge, has addressed the
6 vexatiousness of the Complaints and tried to assess
7 the two cases on the merits to see whether in fact
8 there is such a vexatiousness.

9 I would submit to the Court that
10 there is none in this case. The federal Complaint,
11 if the Court would examine it -- I realize that it is
12 rather lengthy -- but it is simple in this point in
13 that it only involves one defendant, and that
14 defendant is not before this Court. The defendant
15 is not a part --

16 THE COURT: He is not before this
17 Court but he is a named defendant in this case, is
18 he not?

19 MR. BANASH: He's not. He's not,
20 Your Honor.

21 THE COURT: He's not.

22 MR. BANASH: The defendant in the
23 federal case is L. Ron Hubbard, the founder and what
24 we now believe, based on discovery that has occurred
25 in other scientology litigation since the filing of

1 this Complaint, is the main perpetrator of the acts
2 which plaintiff alleges were perpetrated against him.

3 Secondly, he's the party we believe,
4 according to my client, who has the money. We believe
5 that if we were to get a judgment against these
6 defendants, the individuals of whom are basically
7 young adults, we would have no recourse to the extent
8 that Mr. Flynn is seeking. Secondly, that key fact
9 that L. Ron Hubbard is a defendant and the sole
10 defendant in the federal case and is not in this case,
11 I think makes clear the other traditional points
12 which would weigh in favor of a dismissal without
13 prejudice. And that is the comparison of the burden.
14 There is no burden on these defendants by the filing
15 of the federal claim. Matter of fact, there is not
16 prejudice against them whatsoever.

17 One of the defendants in this action,
18 Your Honor, is the Church of Scientology of Boston,
19 Inc., who is a defendant in another case in Federal
20 Court in which myself and Mr. Flynn are co-counsel:
21 Paulette Cooper versus the Church of Scientology.
22 In that case, L. Ron Hubbard is a co-defendant. In
23 that case also, since when we were unable to obtain
24 service on Mr. Hubbard, we brought a Motion for
25 Substituted Service. The Church of Scientology of

1 Boston attempted to make arguments on Mr. Hubbard's
2 behalf. It was denied standing to do so. There is
3 an order, which is attached as Exhibit 8, which is
4 the order of Judge McNaught denying the Boston
5 Church standing, stating in affect that they had no
6 legally recognized prejudice. So I would suggest to
7 the Court that effectively -- if what they are trying
8 to do is estop us in the Federal Court by arguing
9 against our Motion to Dismiss, they have no standing
10 to do so. They are not prejudiced in a legal sense
11 by the federal action. And accordingly, I would
12 suggest to the Court that that second criterion is
13 present in this case, namely: no prejudice, no undue
14 burden.

15 The defendants argue that they
16 catalogued the activity that is inferred in this case,
17 and try to argue from that that vexatiousness or
18 burden.

19 In order to answer that I refer the
20 Court to some of the other exhibits for a background
21 of this litigation. This litigation stems out of a
22 lawsuit, another lawsuit, Scientology lawsuit, filed
23 in the Federal District Court: La Venda Van Schaick
24 versus the Church of Scientology, in which one of the
25 defendants herein admitted that for a period of over

1 a year, I believe was a year and a half, he had
2 entered the condominium compound at Mr. Flynn's
3 office and removed trash from that office and various
4 other documents, segregated it out; which totaled
5 approximately 7200 different documents. Judge Garrity,
6 in that case, issued an injunction.

7 THE COURT: That's federal Garrity?

8 MR. BANASH: That's Judge Arthur
9 Garrity in Federal District Court, issued an injunction
10 against the defendant there, the Church of Scientology
11 of California, enjoining them from disseminating and
12 destroying the documents; a copy of the Restraining
13 Order is annexed in my exhibits.

14 After nine months, though, he said:
15 "It's really a tangential matter to this case.
16 Accordingly, I would suggest that you bring another
17 action -- if you want to get this injunctive relief,
18 you file another action in state court." I have the
19 memorandum of decision annexed hereto, and also a
20 transcript of the hearing in which he made those
21 statements. He gave us ten days to do so, and the
22 transcript, I believe, is -- and the catalogue of
23 the exhibits and the affidavit of Mr. Flynn. The
24 transcript is Exhibit C. And the orders of Judge
25 Garrity are Exhibits A and B.

1 We brought the action within the
2 ten days in attempting to get injunctive relief. In
3 the course of the arguments -- one of the chief
4 arguments, and the one that we primarily litigated,
5 was the irreparability of the harm if the documents
6 were destroyed. In the course of the appeal --

7 THE COURT: What has that got to do
8 with this?

9 MR. BANASH: Well --

10 THE COURT: You are giving me a
11 great deal of background of what's obviously an
12 interesting and long-running set of battles. And
13 I can tell from the papers and from what I've read
14 from the papers that this matter has gone on for
15 quite some time, and regardless of what I do it's
16 probably going to gone on for some time thereafter,
17 and that's fine.

18 My question is: Why should this
19 particular lawsuit be permitted, after a considerable
20 investment of paper, to say nothing of other things,
21 be permitted mainly to die only to spring up again
22 some other time? Why shouldn't you be -- why shouldn't
23 you in fairness be required, in this particular litigation,
24 to take your pick between fighting it out here once
25 and for all or saying that you will fight no more?

1 MR. BANASH: For one very strong
2 reason, Your Honor. There is no phoenix that will
3 rise again. The issue in this case, the injunctive
4 relief, which was fought so heartily there, is not
5 an issue in the federal case.

6 THE COURT: Well, then, what's the
7 problem with denying it -- with allowing a dismissal
8 with prejudice?

9 MR. BANASH: Well, because that
10 was not the only cause of action. That's what has
11 been fought. That goes to the issue of burdensomeness.
12 It's the only issue which has been fought in this
13 litigation. In the Federal Court we are seeking
14 not only damages for that, but a wide variety and
15 a much more extensive cause of action against
16 Mr. Hubbard. A large extent of it is the, as the
17 Court senses very strongly, is to end the what we
18 claim was abusive process litigation. There are 12
19 lawsuits which have been filed against Mr. Flynn;
20 seven of which have been dismissed.

21 THE COURT: I take it that there have
22 been one or two lawsuits filed by Mr. Flynn?

23 MR. BANASH: Two. These two.

24 THE COURT: And other lawsuits filed
25 -- I seek a neutral word -- in which he has had some

1 role?

2 MR. BANASH: As counsel only.

3 THE COURT: That's what I mean.

4 MR. BANASH: He is plaintiff's counsel.

5 THE COURT: And to some extent, I
6 gather, there has been a certain amount of -- and
7 I use the verb advisedly -- soliciting of prospective
8 defendants -- plaintiffs?

9 MR. BANASH: We would heartily dispute
10 that, Your Honor.

11 THE COURT: Well, I mean, soliciting
12 doesn't have quite the nasty ring it used to 20 years
13 ago. Am I correct in my understanding that to some
14 extent Mr. Flynn has, in essence, searched for people
15 who have a complaint against Scientology?

16 MR. BANASH: I can't state that.
17 Mr. Flynn is well known for his being a plaintiff's
18 counsel. And from that La Venda Van Schaick case has
19 --

20 THE COURT: All right. In any event,
21 Mr. Flynn has an interest either as litigant,
22 defendant litigant, plaintiff or counsel in a number
23 of these cases. Do you have any idea how many of them?

24 MR. BANASH: Yes, Your Honor. Through-
25 out the country he is plaintiff's counsel and in excess,

1 I believe, of several hundred cases; co-counsel or
2 advisory in some capacity. But as far as lawsuits
3 which he has brought, there are these two.

4 THE COURT: This one and the one in
5 the Federal Court.

6 MR. BANASH: One if the Federal Court.

7 THE COURT: And the one in Federal
8 Court is just against L. Ron Hubbard, is that correct?

9 MR. BANASH: That's correct,
10 Your Honor.

11 So as to burdensomeness, since these
12 defendants are not involved, since the litigation that
13 was involved in the Federal Court -- in this court,
14 is not the subject of the federal action.

15 THE COURT: Are these defendants
16 named defendants in any other action involving
17 Mr. Flynn?

18 MR. BANASH: Not to my knowledge.

19 THE COURT: Well, if we don't dismiss
20 with prejudice, are they not subject to being sued
21 again this afternoon in some other court? Indeed, in
22 this court?

23 MR. BANASH: That's possible, Your
24 Honor, and we are prepared, for the record, to do as
25 follows: except to the extent that they sue Mr. Flynn

1 and we feel that a counterclaim is necessary for
2 some other reason; and except as they may be trustees
3 or holders of property of L. Ron Hubbard, we are
4 prepared to stipulate that they will not be defendants
5 in any suit brought by Mr. Flynn.

6 THE COURT: Mr. Lieberman, what do
7 you say to that?

8 MR. LIEBERMAN: Several things,
9 Your Honor. First of all --

10 THE COURT: First of all, is the
11 offer acceptable?

12 MR. LIEBERMAN: No, it's not.

13 THE COURT: For what reason?

14 MR. LIEBERMAN: Because these
15 defendants have a continuing interest in the resolution
16 of the dispute in the following ways:

17 First of all, Mr. Banash's statement
18 that to the extent that they may be holders of
19 Mr. Hubbard's property, what they have --

20 THE COURT: Well, now, let us not get
21 into that. The question is this. He says: allow his
22 motion and he will bind himself not to bring an action
23 against you, that is to say, not to revive this action
24 nor -- if I heard him correctly -- bring any action
25 against you. Obviously, if there is some unrelated

1 matter, then you would be free to bring -- Mr. Flynn
2 would be free to bring a claim.

3 MR. LIEBERMAN: I want to address one
4 of the exceptions that he made, though, Your Honor.
5 He said that except to the extent that we may have to
6 sue them because they are holding Mr. Hubbard's
7 property. They have alleged, not only in the
8 federal case that they have just brought, but
9 Mr. Flynn, as attorney, and Mr. Banash as attorney,
10 has alleged in numerous lawsuits throughout the
11 country, and it hasn't been just in the last-- since
12 this lawsuit was filed, that Mr. Hubbard controls
13 all churches of scientology and controls all the
14 money in the all the churches, and that they can go
15 after the church's money.

16 THE COURT: Mr. Banash, I gather
17 from what you have said that the federal action and
18 this action are to some extent related. Is that
19 correct?

20 MR. BANASH: This action is subsumed
21 within the federal action except that they are
22 different parties.

23 THE COURT: I understand that they
24 are different parties. But let me put it this way.
25 If your action against Mr. Hubbard had been brought

1 in the State Court -- in Massachusetts --

2 MR. BANASH: Yes.

3 THE COURT: I gather from what you
4 have been saying to me that the case would be good
5 candidates for consolidation at the minimum.

6 MR. BANASH: That's possible, but
7 in the Federal Court we have actions which could not
8 be brought in the State Court, Your Honor.

9 THE COURT: For example?

10 MR. BANASH: For example, violations
11 of the Racketeers Influence Corrupt Organizations
12 Act.

13 THE COURT: Does that give us civil
14 action? Does the RICO violation give civil action?

15 MR. BANASH: Yes, Your Honor. There
16 is a civil cause of action.

17 THE COURT: In what sense would a
18 violation of RICO not find a state common law analogue?

19 MR. BANASH: Well, there is -- it's
20 possible that 93(a), given the trebled damages, might
21 relate to that to some extent. But the federal cause
22 of action is based on acts, predicate acts of alleged
23 crimes that were committed by Mr. Hubbard infiltrating
24 a legitimate business -- I use that word "legitimate"
25 advisedly -- but a business, the Church of Scientology,

1 in their various entities. And that is specifically,
2 not that baggage of case law under RICO is not
3 adhered to in the Massachusetts Unfairness or
4 Deceptive Trade Practices Act.

5 THE COURT: Do you say that Mr. Hubbard
6 is subject to service of process?

7 MR. BANASH: Yes, we do, Your Honor,
8 even though he is not a resident. Our basis of service
9 is --

10 THE COURT: Well, why shouldn't we
11 then join Mr. Hubbard in this case?

12 MR. BANASH: We can't do the RICO
13 action in this court, Your Honor.

14 MR. LIEBERMAN: May I be heard on
15 that, Your Honor?

16 THE COURT: Not now.

17 MR. BANASH: Your Honor, we have no
18 interest in suing these defendants at this time. It
19 would have --

20 THE COURT: Well, if you have no
21 interest in suing them, then we can save everybody,
22 including your good selves, a good bit of time by
23 allowing the Motion with prejudice.

24 MR. BANASH: But that would affect
25 us. That may well collaterally estop us in the federal

1 case, Your Honor. And we don't feel, based on the
2 discretionary factors which I've gone over --

3 THE COURT: Yes.

4 MR. BANASH: There has been no
5 discovery in this case that has taken place, Your
6 Honor, none whatsoever. The only time that discovery
7 was started was after the federal case was filed.

8 THE COURT: I do have in front of
9 me, just by chance, on top of the pile document
10 entitled: Plaintiff's Motion to Stay Discovery
11 Until Motion to Dismiss is Heard.

12 MR. BANASH: No discovery has taken
13 place.

14 THE COURT: But is because you've
15 stopped it from taking place.

16 MR. BANASH: That's correct. One
17 week ago -- the 13th of September -- I'm sorry -- a
18 month ago, to be exact, which was one week after the
19 federal case was filed, the defendants in the state
20 case sought numerous depositions. And we felt at
21 that point that we didn't want them to incur the costs.
22 We felt --

23 THE COURT: You didn't want them to
24 incur the costs?

25 MR. BANASH: We did not want this

1 litigation to go any further. There was no point
2 in it because we did not intend to pursue it any
3 further. And accordingly, we brought that Motion.
4 The federal case, granted, has just started, but
5 the state case has only progressed since the federal
6 case has begun. There is no cost, no burden, as the
7 case law points out. The defendants of this case
8 were dismissed.

9 Secondly, the federal case --

10 THE COURT: Do sit down, Mr. Lieberman.
11 It must be tiring standing.

12 MR. BANASH: If you will, any research
13 that Mr. Silvergate has done in this case can be
14 very well used in the federal one because he's
15 representing a proposed intervenor in that case.

16 THE COURT: Any of these defendants
17 proposed intervenors?

18 MR. BANASH: He's representing another
19 defendant. The proposed intervenor is the wife of
20 L. Ron Hubbard --

21 THE COURT: But nobody who is in this
22 case, our case here, is a proposed intervenor in the
23 federal case?

24 MR. BANASH: That's correct,
25 Your Honor. The state case was brought in good faith;

1 is a response to Judge Garrity's order; that litigation,
2 the injunctive relief part of that litigation having
3 ended; and the discovery against L. Ron Hubbard
4 having increased and finding in a new cause of
5 action against him, we brought the suit there.

6 I would refer the Court to two cases
7 that are cited in my brief. The one that is cited
8 on pages 10 and 11: the Puerto Rico case, and also
9 the Alamance case -- I don't have the page in my
10 brief in which it is cited, but I have a copy of the
11 case or I can give you the citation. On page 291
12 F 2d, 142. There, a similar offer was made, and
13 there was much more progress of litigation than in
14 this case. And the court allowed the dismissal with-
15 out prejudice.

16 What the defendants are trying to
17 do is very clear. What they are trying to do is defend
18 L. Ron Hubbard. There has been a judgment that they
19 have no standing to do that. We're not seeking any
20 relief against these defendants. If my stipulation --
21 my Motion is revised to make that statement which
22 I offered, no harm, no legally recognized harm can
23 accrue to these defendants; and the harm that has
24 already occurred is so minimal as to be compensable
25 by just taxable causes, if you will.

1 So, on balance, I would suggest,
2 the equities weigh in favor of allowing our Motion.

3 THE COURT: All right. Thank you,
4 very much.

5 I am persuaded from what I've heard
6 and what I have read that the interests of justice
7 require one of two things to happen: Either the
8 Motion to Dismiss be denied with prejudice or the
9 Motion be allowed with prejudice.

10 Now, it seems to me that the plaintiffs
11 are moving to dismiss, and on the basis of what I
12 have heard the defendants are saying they aren't
13 going to proceed -- the plaintiffs are saying they
14 aren't going to proceed against the defendants. So
15 it seems to me on balance that the best thing to do
16 is to allow the Motion to Dismiss with prejudice.
17 That's what I'm going to do.

18 MR. BANASH: I withdraw the Motion
19 then, Your Honor. I can't do that because we feel --

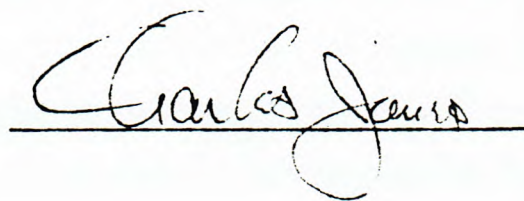
20 THE COURT: You can't withdraw the
21 Motion. You made a motion; I've acted on it. I acted
22 on it before you withdrew it. Please don't play that
23 kind of game with this Court.

24 The Motion before me is allowed
25 with prejudice.

C E R T I F I C A T E

I, Charles Janes, Certified Court Reporter,
do hereby certify that the foregoing record,
Pages 1 through 20, is a complete, accurate
and true transcription of my twin trak voice
reporting system taken in the aforementioned matter
to the best of my skill and ability.

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A handwritten signature in cursive script, reading "Charles Janes", is written over a horizontal line.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Docket No. 54258

MICHAEL J. FLYNN,

Plaintiff,

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC.,
CHURCH OF SCIENTOLOGY OF BOSTON, INC.,
KEVIN TIGHE,
ROBERT JOHNSON, and
DAVID ADEN,

Defendants.

AFFIDAVIT

AFFIDAVIT OF HARVEY A. SILVERGLATE
IN OPPOSITION TO PLAINTIFF'S MOTION
TO DISMISS WITHOUT PREJUDICE

HARVEY A. SILVERGLATE, being first duly sworn, deposes
and says:

1. I am a member of the Bar of this Commonwealth, and
I am co-counsel, along with Eric Blumenson, Esq., for the
defendant Church of Scientology of Boston, Inc., in this
case. My firm is also counsel to the Church of Scientology
of California, Inc. and the individual defendants. I make
this affidavit in opposition to the motion of the plaintiff,
Michael J. Flynn, Esq., to dismiss this entire case without

prejudice. I submit this affidavit in order to provide this Court with the necessary background information to place plaintiff's current motion in the context of Mr. Flynn's four-year campaign to harass and burden the various Churches of Scientology with litigation. As demonstrated herein, Flynn has filed suit after suit with the aim of burdening the Churches, and time after time has withdrawn claims in order to avoid any final rulings on the merits. As detailed in the accompanying affidavit of Eric Blumenson, this is precisely the end plaintiff seeks here: having begun this litigation and having realized that this Court was unlikely to find in his favor, legally and factually, plaintiff hopes to withdraw this action and seek a different forum where he hopes to prevail without opposition.

2. The plaintiff in this case, also a member of the Bar of this Commonwealth, is the self-proclaimed leader of a massive litigation campaign being waged against the Church of Scientology throughout the United States. Scientology is a world-wide religion with several million adherents and with a presence in many American cities, including Boston. Scientology represents itself as "an applied religious philosophy" based upon the writings and teachings of the religion's revered Founder, L. Ron Hubbard.

3. Attorney Flynn has, since late 1979, been engaged in a massive litigation campaign against the Scientology

movement, which campaign has sought, and continues to seek, to force the movement and its individual Churches around the country to settle the litigation for a large sum of money. The current proceedings in this case must be viewed in the context of this overall strategy.

4. Toward the beginning of his four-year campaign to squeeze a large settlement out of the Church of Scientology, Attorney Flynn wrote a series of letters to Church Attorney Jay D. Roth of Los Angeles, California, in which Mr. Flynn set forth in rather frank terms his goals. Mr. Flynn stated in a letter to Mr. Roth, dated June 2, 1981 (appended to this affidavit as Exhibit "A") that unless the Church promptly settled all of the Flynn litigation for "not less than 1.6 million dollars", he would file an "additional 8-10 cases" forthwith. Two weeks later Mr. Flynn escalated the threat by noting that he was in the process "of associating with 5 additional lawyers in various cities in connection with 20 additional lawsuits". (See Flynn letter to Roth, dated June 17, 1981, appended as Exhibit "B" hereto.)

5. Indeed, Mr. Flynn's plan for his Scientology litigation grew well beyond even these boundaries. At one point in time he had developed a scheme to generate numerous class actions and individual actions numbering as high as a thousand cases. Mr. Flynn calculated that it costs the Church, "conservatively", approximately \$100,000. to defend

each such lawsuit brought against it. Another section of that "program" detailed how Mr. Flynn expected to recover up to 35 million dollars in damages from 50 "turnkey" lawsuits. (See excerpts from Mr. Flynn's "Class Action Case Development Program", appended hereto as Exhibit "C".) Thus, Mr. Flynn hoped to represent, and took steps toward locating, thousands of disgruntled Scientologists who might bring suit against their former Church, alleging for the most part "religious fraud" causes of action. Indeed, during 1981, Mr. Flynn was contacting lawyers around the country seeking recruits. See, for example, Exhibit "D" hereto, a memorandum posted on the bulletin board of a Los Angeles law firm, O'Melveny & Myers, on February 26, 1981, by one of Mr. Flynn's law school classmates, describing Mr. Flynn as a "church-buster" who "has made a substantial living suing the Church of Scientology. . . ." and who was soliciting lawyers to join his team.

6. The aforementioned documents make it abundantly clear that Mr. Flynn's strategy has been to threaten this religious movement with so many lawsuits (costing large sums of money to defend) that the Church would be forced to pay him tribute of well over a million dollars. In this view, every disgruntled or former Scientologist becomes a potential plaintiff who could sue for one form or another of religious fraud, clerical malpractice, breach of promise or contract, and so forth. The Church might be faced with an endless stream of expensive-to-defend litigation, such that even if

the Church were to win each case, the litigation could break the Church financially -- hence the use of the descriptive term "church-busters" by Mr. Flynn's classmate in Exhibit "D".

7. This strategy is revealed by Mr. Flynn's conduct in various cases he has filed against the Church. The pending case of La Venda Van Schaick v. Church of Scientology of California, Civil Action No. 79-2491-G (U.S. District Court, D. Mass.) was filed in December of 1979 as a massive, \$200 million purported class action. However, Mr. Flynn never bothered to seek certification of the class, preferring, instead, to file one after another individual "religious fraud" lawsuits against the various Churches of Scientology, obviously keeping in mind his estimate that it cost the Church "conservatively" more than \$100,000. to defend each suit. U.S. District Judge W. Arthur Garrity, Jr. dismissed 7 of the 14 counts in that suit, including all of the class action counts, on March 26, 1982. Thereafter, Mr. Flynn dismissed, piecemeal, all but one of the remaining seven counts. These voluntary dismissals typically occurred, interestingly enough, at points in the litigation when the Church had moved to join an issue. For example, when the Church moved for summary judgment on half of the remaining counts at one point, Mr. Flynn moved to dismiss that portion of the complaint, after full briefing and four hours of oral argument on the Church's

motion for summary judgment. The Church had been optimistic about winning that summary judgment motion, and I believe that Mr. Flynn saw the handwriting on the wall after the oral argument and dismissed his claim rather than allow an adverse ruling against him on the merits.

8. The allegations in the instant case mirror to a great extent some of the allegations being made by Attorney Flynn on behalf of his client in the Van Schaick federal action. In that case, the plaintiff is claiming that Church agents picked his trash (or, as he puts it, stole documents from his "office and office compound" -- the trash dumpster presumably being in the "compound") and that information gleaned therefrom was used for harassment purposes and to separate lawyer and client. Indeed, there has been substantial litigation in the Van Schaick case relating to the very "trash documents" which are at issue in this case.

9. Attorney Flynn has recently filed yet another action making similar allegations. On September 7, 1983, Mr. Flynn, as the plaintiff, filed Michael J. Flynn v. Lafayette Ronald Hubbard, a/k/a L. Ron Hubbard, Civil Action No. 83-2642-C (U.S. District Court, D. Mass.). That complaint (a copy of which is appended as Exhibit "E" hereto) includes extensive allegations similar to those in the instant case, except that this new federal suit names only L. Ron Hubbard, Scientology's Founder, as the lone defendant. Mr. Flynn has

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apparently named Mr. Hubbard alone, refraining from naming all of the other parties previously sued for allegedly picking his trash (including all of the defendants in the case at bar), because he expects that Mr. Hubbard will not appear to defend, and hence Mr. Flynn stands a chance of obtaining a default judgment without ever having to prove any of his charges. See Exhibit "F" hereto, Mr. Flynn's "Motion to Strike Letter Dated September 14, 1983", paragraph 7, in which Mr. Flynn notes: "It is speculation at this point that Mr. Hubbard will ever appear."

10. Although no depositions have yet been taken in the instant case, it would be misleading to conclude that the case is not far advanced in terms of discovery. The fact is that numerous witnesses in the instant case have been deposed in one or another of Mr. Flynn's other cases against Scientology. Counsel for the defendants in the case at bar see no need to depose those same people again, unless and until it becomes clear that there is information needed from them which has not already been obtained. Indeed, to have repeated here any of those depositions would doubtless have produced from the plaintiff herein a cry of "harassment" as a result of "duplicative" discovery. For example, very recently Mr. Flynn's office has accused Church counsel of harassment for seeking to take depositions in the Van Schaick case of witnesses who were previously deposed in other of

Mr. Flynn's Scientology cases. (See letter from Michael Tabb of Mr. Flynn's office, to David Fine, dated October 4, 1983, Exhibit "G" hereto.) It thus cannot be held against the Church that it has been spare and selective in conducting discovery. Furthermore, a very substantial amount of investigation has been conducted, and much legal research has been done as well. (This case, after all, has already been to the Appeals Court on Mr. Flynn's motion for a preliminary injunction.)

11. Furthermore, Mr. Flynn has given wide publicity to his litigation against Scientology in general, and to his allegations of harassment arising from the "trash picking" in particular. On one occasion, he posed with the allegedly "stolen" documents for an article in PEOPLE Magazine of January 24, 1983 (Exhibit "H"). Furthermore, more than a week before he filed his complaint in the Flynn v. Hubbard case, he turned a copy of the draft complaint over to a newspaper reported for the North Shore Weeklies chain of papers, which published a story in which Mr. Flynn's allegations concerning the "trash picking" and other charges of harassment were given great prominence. (Copy of newspaper article is appended hereto as Exhibit "I".) Thus, a loss by Mr. Flynn on the merits of the case at bar could prove to be an embarrassment to Mr. Flynn.

12. In addition, it has been part of Mr. Flynn's litigation strategy not only to multiply the number of cases that the Church must defend, but also to avoid having any of those cases decided against him. (See discussion in paragraph 7, above, of his strategic retreats in the Van Schaick case.) He has made numerous public statements to the effect that he has been successful in his Scientology litigation. Thus, while he apparently told his law school classmate (see Exhibit "D") that he "has made a substantial living suing the Church of Scientology", the fact is that Mr. Flynn has not recovered a single dollar from any of this litigation to date. Similarly, in a brochure mailed out by Mr. Flynn to other lawyers, seeking to enlist their aid in his "class action development program" against Scientology, he makes the claim that "we have won practically every motion before the various courts and have won every major motion, such as motion to dismiss". (Exhibit "J", "History of Involvement of Law Offices of Michael J. Flynn in Lawsuits Against the Church of Scientology", at page 12 of that document.)

13. This is not the only of Mr. Flynn's cases in which duplicative litigation involving the same issues has been brought. For example, Mr. Flynn represents one Paulette Cooper, who is the plaintiff against the Church of Scientology in numerous cases. She filed a tort action in 1978 in

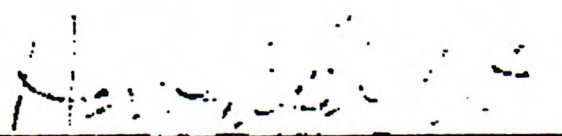
California and a virtually identical action in 1981 in Massachusetts against the Church of Scientology of California and various other defendants. Cooper v. Church of Scientology of California, No. CV782054RMT (C.D. Cal.) and Cooper v. Church of Scientology of Boston, Inc., et al., No. 81-681-MC (D. Mass.). In the latter action, Ms. Cooper was represented by the plaintiff herein, Michael Flynn. United States District Judge Robert M. Takasugi, presiding over the California case, explicitly found that the plaintiff had filed duplicative lawsuits and had engaged in forum shopping, and enjoined Ms. Cooper from prosecuting her action against the Church of California in the Massachusetts court (Exhibit "K"). Subsequently, District Judge John McNaught stayed all litigation of the Massachusetts action against all defendants, until completion of the earlier filed California case (Exhibit "1"). Judge McNaught acted despite the fact that neither the identity of the parties nor the claims in the two actions were precisely congruent.

14. It is thus my view, based upon my experience in defending Mr. Flynn's Scientology litigation and upon a view of his overall litigation strategy, that Mr. Flynn is desperately seeking to avoid a loss on the merits in the case at bar, and that he has thus chosen to make his allega-

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tions against a new defendant -- one that he is convinced will not appear to defend -- in his new federal action, which he hopes will result in a default judgment against the reclusive Founder of the religion of Scientology. Dismissal of the action at bar, without prejudice, would further that strategy, but it would also condemn these defendants to having to appear and defend themselves in an endless array of lawsuits, never to have a single one of them result in a final judgment. The plaintiff's apparent policy has been, and continues to be, that "he who fights and runs away, lives to fight another day". This is a fine strategy for survival "on the street", but it is an inappropriate strategy for the courtroom, where defendants must spend time, money, and energy defending their reputations and their assets.

Signed under the pains and penalties of perjury on this 11th day of October, 1983, at Boston, Massachusetts.


Harvey A. Silvergate

Exhibits "A" through "L"
attached hereto.

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Exhibits to the Affidavit
of Harvey A. Silverplate
in Opposition to Plaintiff's
Motion to Dismiss without
Prejudice

- Exhibit "A": Letter of Michael J. Flynn to Jay D. Roth, dated June 2, 1981
- Exhibit "B": Letter of Michael J. Flynn to Jay D. Roth, dated June 17, 1981
- Exhibit "C": Excerpts from "Class Action Development Plan"
- Exhibit "D": Memorandum posted on bulletin board at Los Angeles, California, law firm of O'Melveny & Myers
- Exhibit "E": Complaint in Michael J. Flynn v. Lafayette Ronald Hubbard a/k/a L. Ron Hubbard, filed September 7, 1983
- Exhibit "F": "Motion to Strike Letter Dated September 14, 1983," filed by plaintiff in Michael J. Flynn v. Lafayette Ronald Hubbard a/k/a L. Ron Hubbard on September 23, 1983
- Exhibit "G": Letter of Michael A. Tabb, Esq., to David J. Fine, Esq., dated October 4, 1983
- Exhibit "H": Excerpt from PEOPLE MAGAZINE issue of January 24, 1983
- Exhibit "I": "Michael Flynn's One-Man War: A Boxford Man's Singlehanded Battle against the Scientology Cult," from "The Region" section of the TRI-TOWN TRANSCRIPT issue of August 31, 1983
- Exhibit "J": "Exhibit #1: History of Involvement of Law Offices of Michael J. Flynn in Lawsuits against the Church of Scientology"
- Exhibit "K": "Injunction" and "Findings of Fact and Conclusions of Law" issued by Hon. Robert M. Takasugi in Paulette Cooper v. Church of Scientology of California, etc. (U.S. District Court, Central District of California)
- Exhibit "L": "Memorandum and Order" issued by Hon. John J. McNaught in Paulette Cooper v. Church of Scientology of California, et al. (U.S. District Court, District of Massachusetts)

SUFFOLK, ss.

**SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Docket No. 54258**

Plaintiff,

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC.,
CHURCH OF SCIENTOLOGY OF BOSTON, INC.,
KEVIN TIGHE,
ROBERT JOHNSON, and
DAVID ADEN,

Defendants.

AFFIDAVIT

**AFFIDAVIT OF ERIC D. BLUMENSON, ESQ.
IN OPPOSITION TO PLAINTIFF'S MOTION
TO DISMISS WITHOUT PREJUDICE**

ERIC D. BLUMENSON, being first duly sworn, deposes and
says:

1. I am a member of the bar of this Commonwealth, and I am counsel for the Church of Scientology of Boston, Inc., in this case.

2. In this affidavit I detail facts demonstrating that it would be a substantial injustice to the defendants to dismiss this case without prejudice. These facts relate to (a) the age and history of the case, (b) the absence of any

legitimate reason for seeking to litigate this case at a future time, and (c) plaintiff's conduct in this case to date.

3. On or about April 9, 1982, plaintiff commenced this action naming as defendants the Church of Scientology of California, Inc. (hereinafter the "Church of California"), the Church of Scientology of Boston, Inc. (hereinafter the "Church of Boston"), Kevin Tighe, Robert Johnson and David Aden.* The complaint alleged that the defendants conspired to, and did, without authorization from plaintiff, take documents from plaintiff's office and from a dumpster adjacent to plaintiff's office, and used these documents to file frivolous bar complaints against plaintiff (Complaint, ¶ 12), to defame and "misrepresent" plaintiff (id.), to contact plaintiff's clients to make threats, false representations, and "sabotage" plaintiff's practice of law. (Complaint, ¶ 13) and to intimidate and harass witnesses in 11 named actions (Complaint, ¶ 14). Plaintiff alleged five causes of actions: conversion, invasion of right of privacy, unfair and deceptive trade practices and two counts seeking return of the documents.

*

The docket of proceedings is attached hereto as Exhibit A.

Plaintiffs sought, at the same time as he began this action a temporary restraining order ordering

defendants, their counsel, agents servants and anyone acting in concert with them or anyone else in actual or constructive notice of such Restraining Order, to redeliver to plaintiff [all the documents]

Plaintiff also sought a Preliminary Injunction

restraining the defendants, their agents, servants and anyone acting in concert with them or anyone else in actual or constructive notice of such order from copying, distributing, transferring, modifying, disseminating, destroying or in any way using or disclosing the contents of any of the documents, materials or other writings. . .

and

ordering the defendants, their counsel, their agents, servants and anyone acting in concert with them or anyone else in actual or constructive notice of such order, to redeliver all documents, materials and other writings. . . .

Finally, plaintiff sought to recover his actual damages caused by defendants' acts and either double or treble damages, along with attorneys' fees, interest and costs.

Thereafter, the Church of Boston, Tighe, Johnson and Aden opposed plaintiff's motion for a temporary restraining order and submitted in opposition the affidavit of Nancy Gertner, supported by voluminous exhibits. The opposition demonstrated that plaintiff could neither show a likelihood of success on the merits nor that plaintiff would be irreparably harmed.

Plaintiff filed a Memorandum In Support of Application For Injunctive Relief arguing, in essence, the merits of his action, attached hereto as Exhibit "B". Plaintiff also filed six affidavits and numerous other papers addressing the legal and factual issues in this action.

On April 15, 1982, this Court denied plaintiff's application for a preliminary injunction. Thereafter, on April 16, 1982, plaintiff filed a Petition for Interlocutory Review of the April 15 order. On April 16, 1982, after argument, plaintiff's petition was denied by Honorable Rose, J.

Meanwhile on April 14, 1982, the Church of California moved, pursuant to Rule 12, Mass. R. Civ. Pro., to dismiss the complaint on the grounds of insufficient service of process and failure to state a claim upon which relief can be granted. In support of its motion, the Church of California submitted three affidavits. Plaintiff opposed the motion, relying upon material outside the record, including affidavits and hearing transcripts in other actions.

On May 10, 1982, the Church of Boston, and the individual defendants answered the complaint asserting three affirmative defenses.

On August 29, 1983, plaintiff filed a purported notice of voluntary dismissal against the Church of Scientology of California, Inc.

4. On September 16, 1983 I sent Mr. Flynn a notice of the taking of his deposition (Exhibit "C"), setting

September 29 as the deposition date. Given a previous history of discovery problems with Mr. Flynn, I also sent a letter requesting that if September 29 were inconvenient, plaintiff's counsel notify me as soon as possible of other dates "close to September 29" which I might agree to so as to expedite the completion of this deposition (Exhibit "D"). Having heard nothing for 11 days, I called plaintiff's attorney, David Banash. He informed me that Mr. Flynn would not appear on the scheduled date, and that although plaintiff was available on several individual days in October, he would not agree to appear until November 21 unless I guaranteed the deposition would be completed in one day. I did not guarantee this but offered to have the first day in October, and offered that if there were any second day it could be on a day of Mr. Flynn's choosing in November. This proposal was rejected by the plaintiff.

On the scheduled day for deposition, September 29, 1983, Attorney Banash appeared in court with a motion for a protective order. This motion was denied by Judge Pierce. I simultaneously presented a motion to compel, on which no action was taken because the protective order was denied.

5. I believe that Attorney Flynn's refusal to submit to deposition was unreasonable, and his motion for a protective order groundless, for the following reasons:

- (a) The attached court order (Exhibit "E") shows that the Armstrong case was scheduled for a hearing on September 30, not September 29 (the deposition day) as claimed by the plaintiff in his affidavit.

(b) The morning of the hearing I informed Mr. Banash that I understood the Armstrong case had been postponed until mid-October. The reason presented to the court for a protective order was then changed: Attorney Banash acknowledged that Armstrong had been postponed, and argued that Attorney Flynn was required in a Suffolk superior court trial on October 3, a wholly inadequate reason for refusing to appear in deposition on September 29.

(c) I indicated on September 16 my willingness to agree to an alternative, more convenient date. No effort was made by Attorney Flynn or his counsel to seek agreement from me. Rather, Mr. Flynn waited until the day of deposition to file a protective order. Further, Mr. Banash conceded that several dates were available for deposition which he would not agree to.

(d) Judge Pierce stated at the hearing that waiting until the day of deposition to seek a protective order was unreasonable conduct.

(e) The "grounds", such as they were, were fully known during the approximately two weeks between notice and deposition date.

(f) The groundlessness of plaintiff's motion is further demonstrated by his subsequent conduct that afternoon. Rather than appear in deposition, as ordered, plaintiff moved to dismiss his suit. I believe that a reasonable conclusion is that the motion for a protective order was motivated solely by a desire not to appear in deposition.

6. This case was filed one and one half years ago, on April 9, 1982. That fact alone led Judge Pierce, who was presented on September 29 with the motion to dismiss but did not act on it, to declare that "the question is whether it is or is not with prejudice. That is the question that confronts me. If it's a year a half old, I may have a little difficulty with the absence of prejudice. . ." (Excerpts from hearing transcript, attached hereto as Exhibit "F".)

7. To date, plaintiff has submitted no reason to me, on or off the record, as to why his allegations should be litigated in a different forum. Indeed, such a course would result in a less reliable adjudication by allowing Mr. Flynn to "forum shop"^{1/} and shield his allegations and witnesses from immediate discovery.^{2/} It also would leave the defendant with considerable expenses, including extensive litigation on the preliminary injunction in both Superior Court and the Appeals Court, without even a final resolution to show for it.

8. If plaintiff's motion is allowed, the defendants' names will remain tarnished by serious allegations of wrongdoing with no opportunity to challenge or question them. In Michael Flynn v. L. Ron Hubbard, (United States District Court, D. Mass. CA No. 83-2642-C) plaintiff repeats almost the identical allegations in Federal Court but these defendants will not be able to confront them because the only party defendant named is the Founder of the Church, from whom Mr. Flynn candidly admitted he hopes to obtain a default judgment.

9. While a dismissal without prejudice serves

^{1/} Mr. Flynn has already lost two preliminary adjudications of the merits of this case when his motions for a preliminary injunction and for interlocutory review were denied.

^{2/} As noted below, Mr. Flynn moved to dismiss on the day of his deposition, after having lost a motion for a protective order.

legitimate purposes in some cases, in others it provides a powerful, harassing, "hit and run" technique to a plaintiff who can inflict considerable burdens on a defendant and then move on to another court without ever being held accountable for his allegations. Therefore, Rule 41(a) does not automatically allow a voluntary dismissal after an answer has been filed, but requires the Court to determine whether a dismissal without prejudice would be just.

Abundant evidence exists to show that the case at bar was filed not to obtain redress of a valid claim through litigation, but rather to cause economic and other hardship to Church.

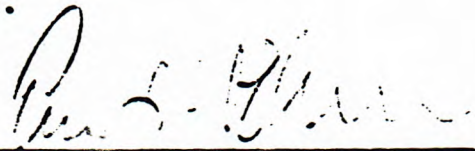
10. The motion to dismiss the instant case was filed on precisely the day plaintiff would otherwise have had to appear in deposition, just after his motion for a protective order was denied. I believe a fair inference arises that the motion to dismiss was a last resort, to be used only if Mr. Flynn could not keep the case alive without having to document his allegations.

11. In this and his other cases, Mr. Flynn has consistently burdened the Church with expensive and needless court proceedings. The events revolving around September 29, 1983, when Mr. Flynn filed this motion rather than be deposed, are a good example. The Church was required to expend some eight hundred dollars simply to obtain plaintiff's deposition (then stayed because of the motion to dismiss),

after Mr. Flynn refused to either appear on his scheduled date or agree to a reasonable new date.

12. Neither the circumvention of discovery nor the desire to obtain a judgment in another forum without having to prove factual allegations constitutes a legitimate reason to dismiss a pending action without prejudice. Since the plaintiff has not suggested any proper justification for the relief he seeks, his motion to dismiss this action without prejudice should be denied.

Signed and sworn under the pains and penalties of perjury this 11th day of October, 1983.


Eric D. Blumenson, Esq.

Exhibits "A" through "E" attached.

Exhibits to the Affidavit
of Eric D. Blumenson, Esq.,
in Opposition to Plaintiff's
Motion to Dismiss without
Prejudice

- Exhibit "A": Docket of Michael J. Flynn v. Church of Scientology of California, Inc., et al.
- Exhibit "B": Memorandum in Support of Plaintiff's Motion For Injunctive Relief, filed April 14, 1982.
- Exhibit "C": Defendant Church of Scientology of Boston's "Notice of Taking Deposition of Michael J. Flynn," filed on September 16, 1983.
- Exhibit "D": Letter of Eric D. Blumenson, Esq., to plaintiff's counsel, dated September 16, 1983.
- Exhibit "E": "Order" of Hon. John Cole scheduling hearing in Church of Scientology of California, Inc. v. Gerald Armstrong, et al.
- Exhibit "F": Excerpt from the transcript of hearing before Hon. Rudolph Pierce in Michael J. Flynn v. Church of Scientology of California, Inc., et al.

23

RE 115

N.B. FOR CLERK'S USE ONLY

JUDGMENT ENTERED ON DOCKET October 17, 19 83
PURSUANT TO MASS.R.CIV.P.58(a) AND NOTICE SENT
TO PARTIES PURSUANT TO MASS.R.CIV.P.77(d)
AS FOLLOWS:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION

No. 54258

MICHAEL J. FLYNN

PLAINTIFF(S)

v.

CHURCH OF SCIENTOLOGY OF DEFENDANT(S)
CALIFORNIA, INC., et al

JUDGMENT OF DISMISSAL
(OTHER THAN WHEN ISSUES DECIDED BY COURT OR JURY)

THE COMPLAINT OF PLAINTIFF(S) MICHAEL J. FLYNN

IS DISMISSED AS TO DEFENDANT(S) CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC.,
CHURCH OF SCIENTOLOGY OF BOSTON, INC., KEVIN TIGHE, ROBERT JOHNSON & / DAVID ADEN
~~EXEMPT~~ WITH ~~PREJUDICE~~ - ~~WITHOUT~~ WITHOUT COSTS.

DATED AT BOSTON, MASSACHUSETTS, THIS 12TH DAY OF OCTOBER 19 83.

NOTICE SENT:

J-17-83

.G.B.&.F

.G.

.L.S.

.D.B.

.&.ASSOC.

.M.B.

.&.S.

.W.R.

MICHAEL JOSEPH DONOVAN,
CLERK OF COURT

By: John Phynes

ASSISTANT CLERK

*Strike inapplicable words

rb.

Form Civ.P.25A(2nd Rev) 10-78 1,000

(2)

A
WLF

Notary

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
C.A. No. 54258

MICHAEL J. FLYNN
Plaintiff

VS.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, INC., et al
Defendant

PLAINTIFF'S MOTION TO DISMISS
SUFFOLK ss. SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

Oct 12 19 *83*

ALLOWED BY THE COURT.

ATTEST: *John [Signature]*

Plaintiff moves to dismiss without prejudice pursuant to
Mass.R. Civ.P. #41(a)(2).

As grounds therefor, plaintiff states that no counterclaims
have been filed, no discovery has taken place to date and there is
no prejudice to defendants in allowing this dismissal.

Sept 29, 1983
Motion set down for hearing
on Wed, Oct 12, 1983 at
9:30, room 243
By the Court
(Purcell J)

John [Signature]
for Plaintiff

by his attorneys,
HOLLINGSWORTH & ASSOCIATES

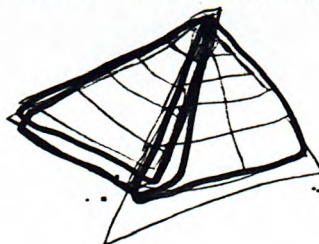
by *David M. Banash*
David M. Banash
10 Union Wharf
Boston, Massachusetts 02109
(617) 227-5100

ICE SENT:
30-83
S.ASSOC.
M.B.
G.
S.
L.S.
D.B.

Dated: September 29, 1983

ESSENCE OF A DRAFT ORDER

Even if it is assumed for the purposes of Mass.R.Civ.P. 56 that it has been established on this record that the defendants are a religion or a religious organization and the statements (and even the acts) which are claimed to be religious relate to religious beliefs and practices of the defendant, there still remains a "triable" issue. The plaintiffs have caused to appear on the record that certain statements, acts and practices of the defendants had a secular purpose or were effected entirely on a secular basis, and as such, have created a jury issue in this regard.



Report it -

- better writing -
- decided interlocutory
⑤ appeal review -
- Exact wording -
essence + draft
he has written

Not Report it

- guideline -
change to
24
- P. Order Benefactors
v. Retinal
on
Jelig -
- if not necessary -

HIGH COURT OF AUSTRALIA

MASON, A-C.J.
MURPHY, WILSON, BRENNAN and DEANE JJ.

THE CHURCH OF THE
NEW FAITH

APPLICANT

AND

THE COMMISSIONER FOR
PAYROLL TAX

RESPONDENT

ORDER

Special leave to appeal granted.

Appeal allowed with costs.

Judgment of the Full Court of the Supreme Court of,
Victoria set aside and in lieu thereof order:

- (i) that the appeal to that Court from the judgment of
Crockett J. be allowed with costs;
- (ii) that the judgment of Crockett J. be set aside and
in lieu thereof order -
 - (a) that the appeal against the assessment of the
appellant to Pay-roll tax be allowed with
costs;
 - (b) that the applicant's assessment to Pay-roll
tax be reduced to nil.

27 October, 1983

Solicitors for the Applicant: Cohens, Frenkel, Berkovitch,
Kefford & New
Solicitor for the Respondent: R. Lambert, Acting Crown
Solicitor for Victoria

MASON A-C.J. and BRENNAN J. Pursuant to the provisions of the *Associations Incorporation Act, 1956-1965 (S.A.)*, The Church of the New Faith Incorporated was incorporated under that name on 31 January 1969. The corporation was registered in Victoria pursuant to the *Companies Act 1961 (Vic.)* as a foreign company. Subsequently, a change in name to "The Church of Scientology Incorporated" was registered in South Australia. Though no change of name has been registered in Victoria, the corporation uses and is apparently known by its new name in that State.

The corporation was assessed to pay-roll tax under the *Pay-roll Tax Act 1971 (Vic.)*. The wages assessed as liable to pay-roll tax under that Act were paid or payable during the period 1 July 1975 to 30 June 1977. The corporation objected to the assessment upon the ground that the wages were exempt under the provisions of s.10(b). At the relevant time (the section was amended in 1979), s.10(b) provided:

" 10. The wages liable to pay-roll tax under this Act do not include wages paid or payable -

...

(b) by a religious or public benevolent institution, or a public hospital;"

The corporation, contending that it was a religious institution for the purposes of this section, objected to the assessment but the Commissioner of Pay-roll Tax disallowed the objection. The corporation requested the Commissioner to treat its objection as an appeal and to cause the objection to be set down for hearing in the Supreme Court of Victoria. Crockett J. dismissed that appeal; the corporation then appealed to the Full Court. The Full Court dismissed the appeal and the corporation now applies for special leave to appeal against that dismissal.

The case has been fought throughout as though the answer to the question "Is Scientology a Religion?" furnishes the answer to the question whether the corporation was, during the relevant period, a religious institution. That basis has been adhered to in the argument before this Court, and it ought not to be departed from in determining this application. That is not to say that the basis adopted by the parties raised the

relevant question for decision. It does not follow that the common religion of a group stamps a religious character on an institution founded, maintained or staffed by members of that group or that the purpose or activity of such an institution is religious. The basis adopted by the parties in fighting this case has concealed the factors which are relevant to the character of the corporation, namely, the purpose for which the corporation was formed and is maintained and the activities of the corporation. The question whether those factors are religious in nature has not been judicially considered.

Thus special leave is applied for in order to argue on appeal the question chosen by the parties as the issue: Is Scientology a religion? Counsel were invited to argue the application fully, so as to canvass the issues of the appeal which would arise if special leave were granted. Accordingly, the question "Is Scientology a Religion?" was argued by reference to all the affidavits read and the oral testimony given before the Supreme Court and by reference to tendered exhibits which included a veritable library of books written by one Lafayette Ronald Hubbard. Scientology is said to have been "discovered, developed and organized" by Mr Hubbard alone. The library is large, and the meaning of much of it is obscure. An explanation of some parts of those books was undertaken in the oral evidence given before the Supreme Court, but many other parts - some of impenetrable obscurity - were not referred to in the affidavit and oral evidence. Is the Court to examine and to construe the writings of Mr Hubbard as though they were ordinary documentary exhibits? The obscurity of some of his writings would make that course particularly difficult. There are, however, compelling reasons for not going into areas of obscurity that have not been explained by the affidavits or the oral evidence. The meaning of obscure passages in writings advanced as religious writings is not necessarily ascertained by taking the ordinary meaning of the words used. The true meaning of such passages - that is, the meaning intended by the author or apprehended by the adherents of the religion - can be furnished by those for whom the passages bear that meaning, but may well be missed by others. Thus it would be erroneous to assume that the account of creation contained in the Book of Genesis is taken literally by many of those who accept its authority as an inspired biblical text. No valid statement can be made as to a tenet of a religion unless its validity as a tenet is recognized by the adherents of that religion. A court cannot be assured

that the meaning of writings said to be of religious significance is the meaning which the ordinary reader would attribute to them. When the tenets of a putative religion are to be ascertained, a court would be ill-advised to go searching for tenets which are said to inhere in obscure writings without the guidance of those who can explain the meaning which the adherents of the religion accept. It would be ill-advised in this case to take the obscure parts of Mr Hubbard's writings which have not been illuminated by evidence and, by construing those parts, to find therein the tenets which he intended to teach, or which his followers believe and accept.

Therefore the question which falls for determination by this Court if special leave be granted must be stated anew. The question whether Scientology is a religion cannot be answered, for there seem to be important, perhaps critically important, tenets of Scientology which the parties left without full examination. The question which can be answered is whether the beliefs, practices and observances which were established by the affidavits and oral evidence as the set of beliefs, practices and observances accepted by Scientologists are properly to be described as a religion.

Should special leave be granted in order to consider that question? Two circumstances combine to give an affirmative answer: the legal importance of the concept of religion and the paucity of Australian authority. Freedom of religion, the paradigm freedom of conscience, is of the essence of a free society. The chief function in the law of a definition of religion is to mark out an area within which a person subject to the law is free to believe and to act in accordance with his belief without legal restraint. Such a definition affects the scope and operation of s.116 of the Constitution and identifies the subject matters which other laws are presumed not to intend to affect. Religion is thus a concept of fundamental importance to the law. Moreover, although this case does not arise under s.116 of the Constitution or under any part of its fourfold guarantee of religious freedom, it is inevitable that the judgments in the Supreme Court, so long as they stand without consideration by this Court, will influence the construction placed upon s.116 of the Constitution by other Australian courts.

Hitherto the concept of religion has received little judicial exegesis in Australia, whether under s.116 or otherwise. In *Adelaide Company of Jehovah's Witnesses*

Inc. v. The Commonwealth (1943) 67 C.L.R. 116, only Latham C.J. and McTiernan J. found it necessary to state a view as to the connotation of the term. Since then, the concept has been considered by the courts of the United States and England. The opinions of those courts are helpful, but it is time for this Court to grapple with the concept and to consider whether the notions adopted in other places are valid in Australian law. The disadvantage in leaving the concept without examination by this Court was manifested by the course of the argument before us. Counsel for the corporation contended for a wide definition of religion in accordance with the indicia of a religion set out by Adams J. in *Malnak v. Yogi* 592 F.2d 197 (1979), though it is clear that the formulation of those indicia owed much to the tests adopted by the Supreme Court of the United States in construing particular Acts of the Congress. On the other hand, counsel for the Commissioner contended for a narrow definition which accorded with the test of a religion propounded by Dillon J. in *In re South Place Ethical Society; Barralet v. Attorney-General* [1980] 1 W.L.R.1565, at p.1572, a test which confines the concept to theistic religions. It is undesirable that the clarification of a concept important to the law of Australia should be left to the courts of other countries when there is an appropriate opportunity for the concept to be clarified by this Court. Of course, when Australian courts are engaged in clarifying concepts important to Australian law, they may be aided by appropriate citation from the judgments of courts outside the Australian hierarchy if there is no binding or sufficiently persuasive Australian authority. The differing approaches of the judgments in the Full Court in this case, however, manifest the need for an authoritative Australian exposition of the concept of religion. It is desirable to grant special leave in order to expound, so far as the circumstances of the case require, a concept of religion appropriate to discriminate in law between what is a religion and what is not.

An endeavour to define religion for legal purposes gives rise to peculiar difficulties, one of which was stated by Latham C.J. in *Jehovah's Witnesses Inc.*, at p.123:

" It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world."

The absence of a definition which is universally satisfying points to a more fundamental difficulty affecting the adoption of a definition for legal purposes. A definition cannot be adopted merely because it would satisfy the majority of the community or because it corresponds with a concept currently accepted by that majority. The development of the law towards complete religious liberty and religious equality to which Rich J. referred in *Jehovah's Witnesses Inc.* (at p.149) would be subverted and the guarantees in s.116 of the Constitution would lose their character as a bastion of freedom if religion were so defined as to exclude from its ambit minority religions out of the main streams of religious thought. Though religious freedom and religious equality are beneficial to all true religions, minority religions - not well established and accepted - stand in need of especial protection (cf. per Latham C.J. in *Jehovah's Witnesses Inc.*, at p.124). It is more accurate to say that protection is required for the adherents of religions, not for the religions themselves. Protection is not accorded to safeguard the tenets of each religion; no such protection can be given by the law, and it would be contradictory of the law to protect at once the tenets of different religions which are incompatible with one another. Protection is accorded to preserve the dignity and freedom of each man so that he may adhere to any religion of his choosing or to none. The freedom of religion being equally conferred on all, the variety of religious beliefs which are within the area of legal immunity is not restricted.

Of course, the present case is not concerned with a personal freedom of religion; it is concerned with an exemption of a religious institution from a fiscal burden imposed upon other institutions, but no narrow definition of religion can be accepted on this account. There can be no acceptable discrimination between institutions which take their character from religions which the majority of the community recognizes as religions and institutions that take their character from religions which lack that general recognition. The statutory syncretism which a Parliament adopts in enacting a provision favouring religious institutions is not to be eroded by confining unduly the denotation of the term religion and its derivatives.

These considerations, tending against the adoption of a narrow definition, may suggest the rejection of any definition which would exclude from the category of religion the beliefs, practices and observances of any group who

assert their beliefs, practices and observances to be religious. But such an assertion cannot be adopted as a legal criterion. The mantle of immunity would soon be in tatters if it were wrapped around beliefs, practices and observances of every kind whenever a group of adherents chose to call them a religion (cf. *United States v. Kuch* 288 F.Supp.439 (1968)). A more objective criterion is required.

That criterion must be found in the indicia exhibited by acknowledged religions, so that any set of beliefs, practices and observances which are accepted by a group of adherents and which exhibit that criterion will be held to be a religion. But what is the range of acknowledged religions from which the criterion is to be derived? The literature of comparative religion, modern means of communication and the diverse ethnic and cultural components of contemporary Australian society require that the search for religious indicia should not be confined to the Judaic group of religions - Judaism, Christianity, Islam - for the tenets of other acknowledged religions, including those which are not monotheistic or even theistic, are elements in the contemporary atmosphere of ideas. But the task of surveying the whole range of Judaic and other acknowledged religions is daunting, as Professor Arnold Toynbee found:

" If we set out to make a survey of the religions that have been practised at different times and places by the numerous human societies and communities of whom we have some knowledge, our first impression will be one of a bewilderingly infinite variety."

(*An Historian's Approach to Religion*, 2nd ed., Oxford, 1979, p.16). And Sir James Frazer, in a passage in his *The Golden Bough* (Abridged edition, 1954, at p.50) cited by Young C.J. in the present case, confirms the opinion of Latham C.J.:

" There is probably no subject in the world about which opinions differ so much as the nature of religion, and to frame a definition of it which would satisfy everyone must obviously be impossible."

In the study of comparative religion, various analyses have been attempted, and none appears to have exhausted

the rich diversity of the available data (see Sharpe, *Comparative Religion*, Bristol, 1975). The derivation of all the common indicia of religions is thus a task which a court cannot hope to perform by a detailed analysis of all acknowledged religions. Indeed, courts are not equipped to make such a study, and the acculturation of a judge in one religious environment would impede his understanding of others. But so broad a study is not required. The relevant enquiry is to ascertain what is meant by religion as an area of legal freedom or immunity, and that enquiry looks to those essential indicia of religion which attract that freedom or immunity. It is in truth an enquiry into legal policy.

The law seeks to leave man as free as possible in conscience to respond to the abiding and fundamental problems of human existence. In all societies and in all ages man has pondered upon the explanation of the existence of the phenomenological universe, the meaning of his existence and his destiny. An understanding of these problems is furnished in part by the natural and behavioural sciences and by other humanist disciplines. They go far towards explaining the universe and its elements and the relationships between nations, groups and individuals. Many philosophies, however, go beyond the fields of these disciplines and seek to explain, in terms of a broader reality, the existence of the universe, the meaning of human life, and human destiny. For some, the natural order, known or knowable by use of man's senses and his natural reason, provides a sufficient and exhaustive solution to these great problems; for others, an adequate solution can be found only in the supernatural order, in which man may believe as a matter of faith, but which he cannot know by his senses and the reality of which he cannot demonstrate to others who do not share his faith. He may believe that his faith has been revealed or confirmed by supernatural authority or his reason alone may lead him to postulate the tenets of his faith. Faith in the supernatural, transcending reasoning about the natural order, is the stuff of religious belief. Augustus N. Hand J. said, obiter, in *United States v. Kauten* 133 F.2d 703 (1943), at p.708:

" ... the content of the term [religion] is found in the history of the human race and is incapable of compression into a few words. Religious belief arises from a sense of the inadequacy of reason as a means of relating the

individual to his fellow-men and to his universe - a sense common to men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to be limited by it."

Under our law, the State has no prophetic role in relation to religious belief; the State can neither declare supernatural truth nor determine the paths through which the human mind must search in a quest for supernatural truth. The courts are constrained to accord freedom to faith in the supernatural, for there are no means of finding upon evidence whether a postulated tenet of supernatural truth is erroneous or whether a supernatural revelation of truth has been made. We would respectfully adopt what Douglas J. said in *United States v. Ballard* 322 U.S. 78 (1944), at pp.86,87 in reference to the freedom of religious belief:

" It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law."

Religious belief is more than a cosmology; it is a belief in a supernatural Being, Thing or Principle. But religious belief is not by itself a religion. Religion is also concerned, at least to some extent, with a relationship between man and the supernatural order and with supernatural influence upon his life and conduct. Clifford Geertz, writing an "Anthropological Study of Religion" in the *International Encyclopedia of the Social Sciences* (London, 1968, vol. 13, p.405) concluded that:

" Whatever else religion does, it relates a view of the ultimate nature of reality to a set of ideas of how man is well advised, even obligated, to live."

Thus religion encompasses conduct, no less than belief.

Professor Max Mueller, an early scholar in comparative religion, wrote (*Natural Religion* (Collected Works I, 1899, at p.169) cited by Sharpe, *op.cit.*, at p.39):

" When ... men began to feel constrained to do what they do not like to do, or to abstain from what they would like to do, for the sake of some unknown powers which they have discovered behind the storm or the sky or the sun or the moon, then we are at last on religious ground."

What man feels constrained to do or to abstain from doing because of his faith in the supernatural is *prima facie* within the area of legal immunity, for his freedom to believe would be impaired by restriction upon conduct in which he engages in giving effect to that belief. The canons of conduct which he accepts as valid for himself in order to give effect to his belief in the supernatural are no less a part of his religion than the belief itself. Conversely, unless there be a real connection between a person's belief in the supernatural and particular conduct in which that person engages, that conduct cannot itself be characterized as religious.

The canons of conduct which are part of a religion reflect that religion's set of beliefs, and thus a theistic religion typically includes the acceptance of a duty of ritual observance, as well as ethical practice. In *Jehovah's Witnesses Inc.*, McTiernan J. said (at p.156) that the "word religion extends to faith and worship, to the teaching and propagation of religion, and to the practices and observances of religion". Conduct which consists in worship, teaching, propagation, practices or observances may be held to be religious, however, only if the motivation for engaging in the conduct is religious. That is, if the person who engages in the conduct does so in giving effect to his particular faith in the supernatural.

But the area of legal immunity marked out by the concept of religion cannot extend to all conduct in which a person may engage in giving effect to his faith in the supernatural. The freedom to act in accordance with one's religious beliefs is not as inviolate as the freedom to believe, for general laws to preserve and protect society are not defeated by a plea of religious obligation to breach them (*cf. Cantwell v. Connecticut* 310 U.S.296 (1940), at p.304). Religious conviction is not a solvent of legal obligation. Thus, in *Jehovah's Witnesses Inc.* a prohibition

against subversion of the war effort was not circumvented by the pacifist ideals of the Jehovah's Witnesses, and this Court rejected their challenge to the validity of the National Security (Subversive Associations) Regulations, even though s.116 protects both freedom of religious opinion and the free exercise of religion. In the United States, where similar constitutional guarantees are to be found in the First Amendment, the free exercise clause was held not to exempt the Mormons from the law forbidding polygamy, though they deemed it to be a religious duty, circumstances permitting, to practise polygamy. In *Reynolds v. United States* 98 U.S. 145 (1878), at p.167, the Supreme Court held that to excuse polygamy on religious grounds would "make the professed doctrines of religious belief superior to the law of the land, and in effect ... permit every citizen to become a law unto himself. Government could exist only in name under such circumstances". Conduct in which a person engages in giving effect to his faith in the supernatural is religious, but it is excluded from the area of legal immunity marked out by the concept of religion if it offends against the ordinary laws, that is, if it offends against laws which do not discriminate against religion generally or against particular religions or against conduct of a kind which is characteristic only of a religion.

We would therefore hold that, for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion. Those criteria may vary in their comparative importance, and there may be a different intensity of belief or of acceptance of canons of conduct among religions or among the adherents to a religion. The tenets of a religion may give primacy to one particular belief or to one particular canon of conduct. Variations in emphasis may distinguish one religion from other religions, but they are irrelevant to the determination of an individual's or a group's freedom to profess and exercise the religion of his, or their, choice.

The test propounded by Adams J. in *Malnak v. Yogi* is wider and the test propounded by Dillon J. in *South Place Ethical Society* is narrower than the test which, in our opinion, is the correct test. *Malnak v. Yogi* followed upon a line of cases relating to exemption from compulsory

military service of persons claiming to be conscientious objectors "by reason of religious training and belief". In those cases the Supreme Court of the United States had been faced with the problem of distinguishing between conscientious objections founded on religious grounds and conscientious objections founded on non-religious grounds - a problem which does not arise in Australia: see *Reg. v. The District Court; Ex parte White* (1966) 116 C.L.R.644, especially at pp.659-661. The Supreme Court held that "religious" in this context described an opposition to military service stemming from moral, ethical or religious beliefs about what is right or wrong when the beliefs are held with the strength of traditional religious conviction: *Welsh v. United States* 398 U.S. 333 (1970); *United States v. Seeger* 380 U.S. 163 (1965); and see, under an earlier statute, the judgment of the Second Circuit Court of Appeals in *United States v. Kauten*. In *Seeger* the Supreme Court quoted from the writings of theologian Dr. Paul Tillich in the context of an examination of the place which a system of beliefs occupied in the life of an objector. The Court said (at p.187):

" We think it clear that the beliefs which prompted his objection occupy the same place in his life as the belief in a traditional deity holds in the lives of his friends, the Quakers. We are reminded once more of Dr. Tillich's thoughts:

' And if that word [God] has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, of your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional that you have learned about God' Tillich, *The Shaking of the Foundations* 57 (1948)."

(Emphasis supplied by the Supreme Court).

The views of the majority of the Supreme Court have been subjected to criticism both judicial and academic, (see, for example, Harlan J. in *Welsh*, at p.351; "Toward a Constitutional Definition of Religion" 91 *Harv.L.Rev.* 1056, at p.1065 n.60 (1978)), but that controversy need not detain us. What is significant for present purposes is

that, although the Supreme Court had resolved the question before it "solely in relation to the language of S.6(j) [of the *Universal Military Training and Service Act*] and not otherwise" (Seeger, at p.174), Adams J. gave the opinions of the Supreme Court a wider currency. He said (at p.204):

" As a matter of logic and language, if the Court is willing to read 'religious belief' so as to comprehend beliefs based upon pantheistic and ethical views, it might be presumed to favor a similar inclusive definition of 'religion' as that term appears in the first amendment."

An earlier decision of the Supreme Court in *Torcaso v. Watkins* 367 U.S. 488 (1961) also led Adams J. to a broader definition of religion. There the Court had held that neither a State nor the Federal Government could "aid those religions based on a belief in the existence of God as against those religions founded on different beliefs" and added, in a footnote (at p.495 n.11):

" Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others."

The Supreme Court had thus appeared to place within the concept of religion not only non-theistic religions but also systems of belief which had no supernatural element. That observation, together with the opinions in *Seeger* and *Welsh*, led Adams J. in *Malnak v. Yogi* to think that a new definition of religion, though not yet fully formed, could be described as a "definition by analogy". His Honour said (at p.207):

" The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.' "

Adams J. expressed the view that there are "three useful indicia that are basic to our traditional religions and that are themselves related to the values that undergird the first amendment" (at pp.207,208). The first of his indicia

was the "ultimate" nature of the ideas presented. The term "ultimate" seems to be derived from the writings of Dr Tillich. Adams J. said (at p.208):

" Expectation that religious ideas should address fundamental questions is in some ways comparable to the reasoning of the Protestant theologian Dr. Paul Tillich, who expressed his view on the essence of religion in the phrase 'ultimate concern.' Tillich perceived religion as intimately connected to concepts that are of the greatest depth and utmost importance."

This approach, however, focuses attention upon the nature of the questions which the set of ideas seeks to answer and diverts attention from the nature of the answers propounded. It furnishes a criterion which looks only to what we described above as the abiding and fundamental problems of human existence. Adams J. clearly identifies the nature of the questions which, if they are addressed by a set of beliefs, indicate the religious character of those beliefs. His Honour said (at p.208):

" One's views, be they orthodox or novel, on the deeper and more imponderable questions - the meaning of life and death, man's role in the Universe, the proper moral code of right and wrong - are those likely to be the most 'intensely personal' and important to the believer. They are his ultimate concerns. As such, they are to be carefully guarded from governmental interference ..."

To attribute a religious character to one's views by reference to the questions which those views address rather than by reference to the answers which they propound is to expand the concept of religion beyond its true domain. As the decision in Welsh illustrates, such an approach sweeps into the category of religious beliefs philosophies that reject the label of a religion and that deny or are silent as to the existence of any supernatural Being, Thing or Principle.

The other two indicia stated by Adams J. may be briefly mentioned. The second of the indicia is the comprehensiveness of the set of ideas. No doubt a set of religious ideas will frequently be comprehensive, but we would not deny the character of a religion to a set of

beliefs and practices which would otherwise qualify merely because its tenets aver or admit that knowledge of the supernatural is partial or otherwise imperfect or because its tenets offer no solution to some of the abiding and fundamental problems of man's existence. The third of the indicia is the existence of "any formal, external, or surface signs that may be analogized to accepted religions", such as formal services, a clergy or festivities. No doubt rituals are relevant factors when they are observed in order to give effect to the beliefs in the supernatural held by the adherents of the supposed religion. Thus ceremonies of worship are central to the Judaic religions manifesting their belief in and dependence on God. Mere ritual, however, devoid of religious motivation, would be a charade.

We are thus unable to accept the corporation's submission that this Court should apply the indicia which found favour with Adams J. in *Malnak v. Yogi*. The second and third indicia are not the criteria of a religion, though they may frequently be found in a religion. On the other hand, we are equally unable to accept the narrower tests which have been propounded in England. In *South Place Ethical Society* (at p.1572) Dillon J. said:

" It seems to me that two of the essential attributes of religion are faith and worship; faith in a god and worship of that god. This is supported by the definitions of religion given in the *Oxford English Dictionary* (1914), although I appreciate that there are other definitions in other dictionaries and books. The *Oxford English Dictionary* gives as one of the definitions of religion: 'A particular system of faith and worship.' Then:

' Recognition on the part of man of some higher unseen power as having control of his destiny, and as being entitled to obedience, reverence, and worship; '".

This test limits religion to theistic religions. A similar test had been applied by the Court of Appeal in *Reg. v. Registrar General, Ex parte Segerdal* [1970] 2 Q.B.697, where it was held that a chapel of the Church of Scientology was not a place of meeting for religious worship. In that case, however, the statutory reference to

worship suggested that Parliament had in mind a theistic religion. To restrict the definition of religion to theistic religions is to exclude Theravada Buddhism, an acknowledged religion, and perhaps other acknowledged religions. It is too narrow a test. We would hold the test of religious belief to be satisfied by belief in supernatural Things or Principles and not to be limited to belief in God or in a supernatural Being otherwise described.

We turn next to the beliefs, practices and observances the character of which is to be determined. The findings of the learned trial judge furnish some but not all of the relevant material. Crockett J. examined the history of the Scientology organization. He found that its predecessor in Australia was the Hubbard Association of Scientologists International ("H.A.S.I."), and that that Association had published, at some time not earlier than 1961, a magazine which unequivocally asserted "H.A.S.I. is non-religious - it does not demand any belief or faith nor is it in conflict with faith. People of all faiths use Scientology". His Honour investigated the subsequent history of the development of the cult, and found that a considerable transformation had ostensibly occurred. But his Honour thought that "the ecclesiastical appearance now assumed by the organization is no more than colourable in order to serve an ulterior purpose", namely, the purpose of acquiring the legal status of a religion so that the organization might have the fiscal and other benefits of that status in Australia and elsewhere and the purpose of avoiding the legal disabilities to which the organization was subject by reason of the *Psychological Practices Act 1965* (Vic.). His Honour expressed his clear conviction that the purported transformation of Scientology to a religion was no more than a sham, the proclaimed belief in the efficacy of prayer was bogus, and the adoption of the paraphernalia and ceremonies of conventional religion was a mockery. He said:

" The very adroitness - and alacrity - with which the tenets or structure were from time [to time] so cynically adapted to meet a deficiency thought to operate in detraction of the claim to classification as a religion serve to rob the movement of that sincerity and integrity that must be cardinal features of any religious faith."

Though his Honour found that at least some parts of Mr Hubbard's writing contained merely pretended doctrines

and practices of Scientology, his Honour found also that members of the Scientology movement are expected to and, apostates excepted, do accord blind reverence to the written works of Mr Hubbard. Although the sincerity and integrity of the ordinary members of the Scientology movement were not in doubt, his Honour held that Scientology was

"no less a sham because there are others prepared to accept and act upon such aims and beliefs as though they were credible when they can not see them for what they are. Gullibility cannot convert something from what it is to something which it is not."

Yet charlatanism is a necessary price of religious freedom, and if a self-proclaimed teacher persuades others to believe in a religion which he propounds, lack of sincerity or integrity on his part is not incompatible with the religious character of the beliefs, practices and observances accepted by his followers. If his Honour had approached the matter from the standpoint of the general group of adherents, he may well have found Scientology to be a religion, for he said:

"Quite possibly if I were to accept as genuine the principles, beliefs and practices supposedly now subscribed to by the Scientology organisation, then I, too, might agree readily enough that its institution was religious in character."

No attack was made upon the sincerity or integrity of the witnesses who stated what the general group of adherents believed and accepted. The question to which the evidence was directed was not whether the beliefs, practices and observances of the persons in ultimate command of the organization constituted a religion but whether those of the general group of adherents constituted a religion. The question which the parties resolved to litigate must be taken to be whether the beliefs, practices and observances which the general group of adherents accept is a religion.

Upon the hypothesis that that is the question to be determined, the findings which Crockett J. made fall short of the findings required to satisfy each of the relevant elements of a religion according to the principles earlier stated. That is not surprising. There were no pleadings,

and the facts to be found necessarily depended upon whatever definition of religion was adopted. The Court had to determine both the ambit of the legal concept of religion and whether the subject beliefs, practices and observances fell within that ambit. Defining the issues for determination differently from the issues as we have stated them, the Supreme Court did not need to ascertain some of the facts which now appear relevant. Either further facts must now be found or the matter must be remitted to the Supreme Court.

There is neither a conflict in evidence nor a question of credibility which requires the matter to be remitted to the Supreme Court. However, the finding of further facts by this Court is rendered difficult by the absence of evidence to explain (if explanation be possible) those obscure parts in the library of books in which, it is said, the beliefs, practices and observances of the general group of adherents can be found. If any inability to ascertain whether the indicia of a religion are present arises because of the obscurity of the writing or the lack of evidence to explain it, the corporation must bear the consequences. It bears the onus of establishing its entitlement to the exemption specified in s.10(b).

Crockett J. made some findings as to the beliefs now expounded in Mr Hubbard's writings and accepted by his followers:

" According to the teachings of Mr. Hubbard the existence of a Supreme Being is to be affirmed and life is to be looked at in the terms of eight dynamics. The first is self and the eighth is the Supreme Being. The person himself is not his body but a thetan - equivalent one might say to a soul or spirit. Man's immortality exists in the power of the thetan to undergo infinite reincarnations. ... However, despite an occasional reference in Mr. Hubbard's books to a 'Supreme Being', or 'Divine being' or God and the placement of the eighth dynamic at the pinnacle of man's awareness of the other dynamics, it does seem apparent, as Winn, L.J. observed in *Segerdal's* case, that the doctrines of scientology are more concerned with 'the transmigration and education of thetans than they are with God in any shape or form or any concept of a divine superhuman, all powerful and controlling entity'."

We do not understand that the belief in the thetan or its capacity for infinite reincarnation is consequential upon or bears any relationship to a belief in a Supreme Being. Indeed Mrs Allen, the senior spokesman for the Church of Scientology in Victoria, said during her cross examination that there was nothing religious in Mr Hubbard's discovery of the thetan in 1951 by the use of scientific methods, but she thought that once man is discovered to be a spiritual being the discovery "can only become religious in its further research". Belief in a Supreme Being is now a part of Scientology, but there is no tenet of Scientology which expresses a particular concept of a Supreme Being. The name of the Supreme Being is left as a matter of individual choice. Each adherent must make up his own mind what his God is. It may be doubted whether a declaration that a Supreme Being exists is, without more, a mark of a theistic religion. But there is no doubt that a belief in the transmigration or infinite reincarnation of thetans is a belief in a supernatural principle. That belief does not require a concomitant belief in a Supreme Being before it qualifies as a religious belief. It is akin to the beliefs of Buddhism from which a large part of Mr Hubbard's ideas are said to be derived. The beliefs which, on Crockett J.'s finding, are accepted by members of the cult, satisfy the first criterion of a religion. But the second criterion is more troublesome. To satisfy the second criterion, the facts must show the acceptance of canons of conduct in order to give effect to a supernatural belief, not being canons of conduct which offend against the ordinary laws.

Finding Scientology's appearance of religion to be a sham, Crockett J. did not need to examine the relationship between the rituals and other canons of conduct propounded by Mr Hubbard and accepted by his followers on the one hand, and the supernatural beliefs entertained by those followers on the other. However, a book entitled *The Scientology Religion* was tendered and it contains chapters headed "Practices" and "Codes of Conduct: Ethics and Right Conduct". It is appropriate to search there for the relevant canons of conduct and their connection, if any, with belief in the supernatural. Several factors are referred to, the first of which is Ethics. Ethics is said to be "a rational system adopted by members of the Church, containing rules of conduct intended to promote the obtaining of spiritual betterment". The content of the ethical system is stated in this way (at p.44):

" 'Ethics is reason and the contemplation of optimum survival', and any ethical decision or calculation considered 'right action' would at the same time enhance survival for the maximum area of life (i.e. with regard to the eight dynamic principles), expanding and yet refining the doctrine of 'the greatest good for the greatest number' to include all dynamics of existence."

According to Mr Hubbard, the "Eight Dynamics" are urges or motivations, the last of which is called the Infinity or God Dynamic. His definition of the Eighth Dynamic is set out in *Scientology - The Fundamentals of Thought* (at p.38):

" ... the urge toward existence as Infinity. This is also identified as the Supreme Being. It is carefully observed here that the science of Scientology does not intrude into the Dynamic of the Supreme Being. This is called the Eighth Dynamic because the symbol of infinity stood upright makes the numeral '8'."

Mrs Allen, the corporation's principal witness, explained her belief in relation to the Eighth Dynamic in these terms:

" ...as the Thetan becomes more aware, particularly of the dynamics there is an urge to survive over all those areas and the urge to survive on that particular dynamic is to become aware - to aid the survival of and to be part of the survival of your supreme being, however you name that supreme being."

Failing to understand the meaning of the passages cited from Mr Hubbard's writing, we are unable there to find a connection between Scientology ethics and Scientology belief; but Mrs Allen seems, however obscurely, to be pointing to some exercise of the will connected with a belief in the survival of a thetan in association with a Supreme Being.

The second factor to which *The Scientology Religion* refers is the codes of conduct of which it is said (at pp.44,45):

" Like the Buddhist system, the Church of

Scientology has prescriptive moral codes intended for adherents; one is a Code of pastoral practice, the Auditor's Code; another is the Code of a Scientologist. The Code of a Scientologist is established to provide a covenant of right conduct for adherents of the Church with regard to matters involving the Church itself.

The Auditor's Code imposes definite regulations and ethical standards to be abided by in the counselling situation at all times.

A further Code, the Code of Honour has been written for each and every person to follow as he chooses."

The various codes of conduct are set out in *The Creation of Human Ability - A Handbook for Scientologists*, at pp.1-8. Auditing is an important aspect of Scientology practice. In *The Scientology Religion* it is stated (at p.37) to be:

" the Scientology Pastoral Counselling [sic] procedure by which an individual is helped, in stages, to recover his self-determinism, ability and awareness of self as an immortal being. It is done during a precise period of time called a 'session', in which an AUDITOR (literally 'one who listens') a trained Scientology minister-counsellor, uses inter-personal communication and carefully devised questions and drills which enable the person audited, called the PRECLEAR, to discover and thereby remove his self-imposed spiritual limitations."

Auditing appears to be the principal means of fulfilling the stated aim of Scientology (p.22):

" ... It is to help the individual become aware of himself as an immortal Being and to help him achieve and attain the basic truths with regard to himself, his relationship to others and all Life, his relationship to the physical universe and the Supreme Being. Further, we want to erase his sin so that he can be good enough to recognise God."

If auditing is an exercise in which the auditor and preclear engage in order to give effect to a belief in thetans or in the Supreme Being, it may be a religious exercise, and the "Auditor's Code" may thereby take on a religious character. But on its face, "The Auditor's Code" seems to be no more than pragmatic advice: for example, "Keep all appointments once made"; "Do not process a preclear after 10.00 p.m.". Or an instruction as to the conduct of auditing: for example, "Never permit the preclear to end the session on his own independent decision" or "Always continue a process as long as it produces change, and no longer".

Some of the canons in "The Code of a Scientologist" are clearly worldly advice: for example, "To discourage the abuse of Scientology in the press" or "To prevent the use of Scientology in advertisements of other products". The seventh canon may be related to the general teachings of Scientology for it says: "To employ Scientology to the greatest good of the greatest number of dynamics". Its meaning is impenetrably obscure.

"The Code of Honour" appears to contain some moral admonitions: for example, "Never desert a comrade in need, in danger or in trouble" or "Never fear to hurt another in a just cause". And it is possible that two of the canons of this code are related to a belief in the thetan:

" Your self-determinism and your honour are more important than your immediate life"

and

" Your integrity to yourself is more important than your body".

However, we can perceive no relevant connection between any canon of the codes of conduct and Scientologists' belief in the supernatural, unless auditing is itself a religious exercise satisfying the second indicium.

The third factor to which reference is made in *The Scientology Religion* (at p.48) is "the Scientology confessional", a part of auditing, which enables an individual to reveal his transgressions against "his own moral codes in terms of the Eight Dynamics, and the mores of his society". If the practice provides a means for an individual to "regain spiritual integrity and composure", as

Mr Hubbard claims, it is not stated to be for any reason related to the set of supernatural beliefs accepted by Scientologists.

Other factors to be considered are the rites and ceremonies - weddings, namings and funerals. Their existence is accounted for in this way: "Scientology has followed all other religions in developing rites and ceremonies" (*The Scientology Religion*, p.40). Mr Hubbard has written formularies for these ceremonies which contain allusions to the notion of the immortal thetan and the Eight Dynamics. They are set out in a book *Ceremonies of the Founding Church of Scientology*. That book opens with the statement: "In a Scientology Church Service we do not use prayers, attitudes of piety, or threats of damnation", but Mrs Allen asserts that a prayer for total freedom is said.

If we do not mistake what Mr Hubbard has written, he does not specify a connection between a supernatural belief (as to thetans or a Supreme Being) and the ethical rules or the codes or the practice of confession or the organization's ceremonies. One may readily appreciate how Crockett J. was led to the view which he expressed, for the writings of Mr Hubbard give to the practices and observances of Scientology the appearance of a farrago of imitations of established religions without the characteristic unity between a particular religion's practices and observances and that religion's set of beliefs in the supernatural. It may be that Mr Hubbard intends the practices and ceremonies to derive their significance from the practice of auditing and the question whether auditing is a religious practice thus assumes a central importance. Is auditing engaged in in order to give effect to a supernatural belief and, if so, is it lawful according to laws which do not discriminate against Scientology or against religion generally?

The service of auditing is rendered for a fee. It is usually sold "in a block of 12 1/2 hours" for a fee of \$650. The selling price of this and 66 other counselling services are displayed in a "Services Price List" which comes from the management echelon of the Scientology organization in America. A person who introduces a buyer for a service is paid a commission of 15% after the service is taken. An instruction to students of auditing includes this advice (*The Creation of Human Ability*, pp.xi, xii):

" That the only scarcity of preclears which will >

occur is through his own indigence, and his procurement of preclears or groups does not depend upon the industry of other auditors but of himself."

To become a minister in the Church, further training services are required. Unless the trainee is a staff member, he is charged a fee (which is not less than \$630) for the service. The fees for auditing and training are the principal sources of the Church's income. Sufficient appears in the evidence to have given rise to a real question as to whether Mr Hubbard or the Church organization intends that auditing be practised for religious or for commercial motives or for a mixture of both motives. If the case had been fought on the issue whether the corporation's purpose and activities were religious, the question of motivation may have emerged more clearly. The principal object of the corporation is stated in its constitution document to be the promotion of Scientology, and if auditing be the chief means of promotion, the motivation of the corporation in promoting auditing would have borne examination.

In the Full Court, Young C.J. was led away from this enquiry by holding that, as the corporation's principal object is the promotion of Scientology, the principal question in the appeal became: is Scientology a religion? But promotion of a religion is not necessarily undertaken in discharge of a religious duty or to fulfil some religious precept. Promotion of religion is not always the preserve of the religious and it may be motivated by pursuit of pecuniary or other venal advantage quite unconnected with and unmotivated by any belief in the supernatural. A commercial institution which derives its income from the sale of religious objects, the sale of religious services or the organization of church finances can hardly be described as a religious institution merely because its commercial activities incidentally conduce to the advancement of religion.

However, the motivation of the corporation in promoting auditing and the other aspects of Scientology has not been litigated, and it is material to determine whether the general group of adherents engage in auditing in order to give effect to their supernatural beliefs. Mrs Allen's evidence is that auditing is used to help a person shed the things that are stopping him from being as happy and as good as he wishes to be, and that the preclear is "handled" as a spiritual being.

The seeming vagueness of the supernatural beliefs and the obscurity of their expression renders difficult the perception of any connection between those beliefs and the practices and observances followed by the general group of adherents. Yet, as Crockett J. found, adherents, who number between 5,000 and 6,000 people in Victoria, accord blind reverence to what Mr Hubbard has written and it may therefore be inferred that they perceive some unifying thread which makes the whole intelligible, or which assembles sufficient of a jigsaw to allow them to see themselves and what they do as part of a supernatural reality. We think an inference should be drawn - though the material to support it is not compelling - that the general group of adherents practise auditing and accept the other practices and observances of Scientology because, in doing what Mr Hubbard bids or advises them to do, they perceive themselves to be giving effect to their supernatural beliefs. The commercial motivation to follow Mr Hubbard's advice is clear, but the evidence does not permit the conclusion that a desire to give effect to supernatural beliefs is not a substantial motive for accepting the practices and observances contained in his writings.

The Commissioner did not seek to show that auditing is unlawful according to the ordinary law. There was no attempt made to prove that auditing involved a contravention of the ordinary law save for a suggestion, which Mrs Allen rebutted, that false representations had been made as to the physical cures worked by auditing. Brooking J., in the Full Court, held that the *Psychological Practices Act* prohibited the beliefs, practices and observances of Scientology from being taught, but that Act (since repealed) discriminated expressly against Scientology. However, the Commissioner did not rely, either here or in the Supreme Court, upon a contravention of the *Psychological Practices Act*.

It follows that, whatever be the intentions of Mr Hubbard and whatever be the motivation of the corporation, the state of the evidence in this case requires a finding that the general group of adherents have a religion. The question whether their beliefs, practices and observances are a religion must, in the state of that evidence, be answered affirmatively. That answer, according to the conventional basis adopted by the parties in fighting the case, must lead to a judgment for the corporation.

Our reasons for departing from the conclusions reached by Crockett J. and by the Full Court sufficiently appear in what we have already written. The length of this judgment precludes an analysis of each of the judgments in the Supreme Court, but we would acknowledge the considerable assistance which we have derived from the anxious consideration which each of their Honours gave to the difficulties inherent in the case.

We would grant special leave to appeal, allow the appeal and, pursuant to s.33C of the *Pay-roll Tax Act*, reduce the assessment to pay-roll tax to nil. The corporation is entitled to its costs here and in the Supreme Court.

MURPHY J. This appeal turns on whether the Church of the New Faith, which was conceded to be an institution, is a "religious institution" and thus exempt from payroll taxation under the Payroll Tax Act 1971 (Vic.) s.10(b).

In Australia there are a great number of tax exemptions and other privileges for religious institutions. Under numerous Federal and State Acts, Regulations and Ordinances they are exempted from taxes imposed on the public generally. Examples are stamp duty, payroll tax, sales tax, local government rates, and the taxes on motor vehicle registration, hire purchase, insurance premiums, purchase and sale of marketable securities and financial transactions. Ministers of religion are exempted from military conscription. There are also special censorship and blasphemy laws against those who deride or attack religious beliefs, particularly those of the Christian religions. There are many other State and Federal laws which directly or indirectly subsidize or support religion.

Because religious status confers such financial and other advantages, the emergence of new religions is bound to be regarded with scepticism.

Scepticism and Religion. Organized religion has always had sceptics, unbelievers, and outright opponents. Voltaire stated "Nothing can be more contrary to religion and the clergy than reason and common sense" (*Philosophical Dictionary* 1764). Jefferson declared "History, I believe, furnishes no example of a priest-ridden people maintaining a free civil government" (*The Writings of Thomas Jefferson*, vol.6 (Washington ed. 1857) p.267). Bakunin expressed opposition most strongly:

"All religions, with their gods, their demigods, and their prophets, their messiahs and their saints, were created by the credulous fancy of men who had not attained the full development and full possession of their faculties" (*God and the State* (1910) p.12).

Scepticism has been strong in Australia since European settlement. This has been attributed primarily to two causes. The progress of science displaced many European religious beliefs. Second, the conditions of settlement and the harsh environment encouraged a philosophy of life based on pragmatic individualism and mutual aid rather than adherence to the abstract dogma, indoctrination and rituals of the organized European religions.

Last century Marcus Clarke described religion as "an active and general delusion" (*Civilization Without Delusion* (1880) p.12). Henry Lawson, Joseph Furphy, Manning Clark, Patrick White, A.B. Facey and many other Australians have written sceptically about organized religion.

Religious freedom. Religious freedom is a fundamental theme of our society. That freedom has been asserted by men and women throughout history by resisting the attempts of government, through its legislative, executive or judicial branches, to define or impose beliefs or practices of religion. Whenever the legislature prescribes what religion is, or permits or requires the executive or the judiciary to determine what religion is, this poses a threat to religious freedom. Religious discrimination by officials or by courts is unacceptable in a free society. The truth or falsity of religions is not the business of officials or the courts. If each purported religion had to show that its doctrines were true, then all might fail. Administrators and judges must resist the temptation to hold that groups or institutions are not religious because claimed religious beliefs or practices seem absurd, fraudulent, evil or novel; or because the group or institution is new, the number of adherents small, the leaders hypocrites, or because they seek to obtain the financial and other privileges which come with religious status. In the eyes of the law, religions are equal. There is no religious club with a monopoly of State privileges for its members. The policy of the law is "one in, all in".

I have previously expressed the view that it is not within the judicial sphere to determine matters of religious doctrine and practice (*Attorney-General (N.S.W.) v. Grant* (1976) 135 C.L.R. 587 (and *Attorney-General (Q.) Ex Rel. Nye v. Cathedral Church of Brisbane* (1977) 136 C.L.R. 353, 377). The United States Supreme Court said "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect" (*Watson v. Jones* 80 U.S. (13 Wall) (1871) 679 at p.728).

The onus is on each applicant for tax exemption to prove, on the civil standard, that it is entitled to the exemption - that it is, more likely than not, a religious institution. Because so many different beliefs or practices have been generally accepted as religious, any attempt to define religion exhaustively runs into difficulty. There is no single acceptable criterion, no essence of religion. As Chief Justice Latham said:

"... It is not an exaggeration to say that each person chooses the content of his own religion. It is not for a court, upon some a priori basis, to disqualify certain beliefs as incapable of being religious in character" (*Adelaide Company of Jehovah's Witnesses Incorporated v. The Commonwealth* (1943) 67 C.L.R. 116, 124).

The better approach is to state what is sufficient, even if not necessary, to bring a body which claims to be religious within the category. Some claims to be religious are not serious but merely a hoax (*United States v. Kuch* 288 Fed. Supp. (1968) p.439), but to reach this conclusion requires an extreme case. On this approach, any body which claims to be religious, whose beliefs or practices are a revival of, or resemble, earlier cults, is religious. Any body which claims to be religious and to believe in a supernatural being or beings, whether physical and visible, such as the sun or the stars, or a physical invisible god or spirit, or an abstract god or entity, is religious. For example, if a few followers of astrology were to found an institution based on the belief that their destinies were influenced or controlled by the stars, and that astrologers can, by reading the stars, divine these destinies, and. If it claimed to be religious, it would be a religious institution. Any body which claims to be religious, and offers a way to find meaning and purpose in life, is religious. The aboriginal religion of Australia and of other countries must be included. The list is not exhaustive; the categories of religion are not closed.

Origins of Religion. Religion is undoubtedly an ancient phenomenon as is shown by archeological evidence, including cave and escarpment carvings and paintings. The Australian aboriginal religions are tens of thousands of years old. The Hindu religious texts, the Vedas, are said to date back six thousand years.

Religion has been explained as a development of magic and the need to rationalize the unknown. Natural events such as thunder, volcanic eruptions and floods, were viewed as the anger of a supernatural being or beings. Death, dreams and visions were also explained as involving divine and mysterious powers. Natural objects - the sun, moon, stars, mountains, volcanoes and trees were worshipped. It was easy for some people to delude others about their knowledge of these supernatural powers. Witchdoctors and priests claimed to have the ear of the

gods. Consistent with the idea that the gods had human attributes and desired admiration and gifts, priests made idols of human shape. These were served by the witchdoctors or priests who gained great social power. As people became sceptical of the divinity of idols, invisible gods were invented. Tribal history and myths, ceremonies, rituals, sacred objects and writings, and compulsory or discretionary rules about behaviour, health and diet, were built into an elaborate structure of belief. The religion so created often buttressed or became consolidated with the civil power as with the Pontifex Maximus, the Pharaohs, the Aztecs, . . . and many existing religions.

Another school views religion as the representation of a society's communal or collective consciousness and emphasizes the relationship between religious orientation and social structures.

Others have seen the origin of religion in deep-seated psychological impulses such as archetypes from the "Collective Unconscious". Jung explained that many religious dogmas, ceremonies and symbols were irrational because, like dreams, they were concerned with integrating the unconscious with the conscious mind, attempting ultimately to bring psychic "wholeness" to the personality. He wrote: "The religious myth is one of man's greatest and most significant achievements, giving him the security and inner strength not to be crushed by the monstrosity of the universe" (*Symbols of Transformation* (1956) p.231).

Church of the New Faith. The applicant Church is an evolution of "Scientology" based on the teachings of Mr Lafayette Ronald Hubbard who states that he drew inspiration from the Indian Vedas, Buddhism and the Tao-Te-Ching of Lao Tzu (*Phoenix Lectures* (1968) pp.1-35). Hubbard began publishing books on Scientology in the early 1950's in the United States. The first Scientology Church was the Church of Scientology of California founded 18 February 1954. Others have since been formed in many countries. Evidence was given that Scientology has some millions of members including about 150,000 in Australia (6,000 in Victoria).

As presented in this case (and these observations about Scientology are limited by what was presented and are necessarily extremely abbreviated) Scientology is based on "Dianetics". Central to "Dianetics" is the "engram", described as a "complete recording down to the last

accurate detail of every perception present in a moment of partial or full unconsciousness". These "engrams" are produced from threats or aids to the survival of the organism called "Dynamics". These eight "Dynamics" are the urge to survival through (1) self (2) sex or children (3) the group (4) all mankind (5) other life forms (6) the physical universe and its components Matter, Energy, Space and Time (7) spirit including "the manifestations or the totality of awareness of awareness units, thetans, demons, ghosts, spirits, goblins and so forth", (8) a Supreme Being, or "Infinity".

"Engrams" produced from interaction with these "Dynamics" form a "reservoir of data" stored in the "reactive" or "unconscious" mind. Mr Hubbard states that these "engrams" cause blockages in the personality; "This is the mind which makes a man suppress his hopes, which holds his apathies, which gives him irresolution when he should act, and kills him before he has begun to live". Through a process of dialogue known as "auditing", these "engrams" are raised to a conscious level and worked out, till a person becomes a "clear". As a "clear" a person identifies with his or her spiritual aspect or "soul" - the "thetan", and breaks free of the constraints and problems of the physical universe of Matter, Energy, Space and Time ("M.E.S.T.") which cause reincarnation.

Emphasizing such doctrines, the Hubbard Association of Scientologists International (as the organization was known in Australia in the early 1980's), called itself a "precision science" (*Testing Magazine* (1961) p.6) or "a form of experimental psychology" (*Communication Magazine* (1963) p.5). Since then it has "evolved". This "evolution" appears outwardly in the traditional trappings of organized European religion - Sunday meetings, ordination of ministers, clerical garb, symbols resembling the crucifix, various other ceremonies and dogmas. Many of the Scientology books in evidence contained the following statement:

"Scientology is a religious philosophy containing pastoral counselling procedures intended to assist an individual to gain greater knowledge of self ... The Hubbard Electrometer is a religious artifact used in the Church confessional. It, in itself, does nothing, and is used by Ministers only, to assist parishioners in locating areas of spiritual distress or travail".

Article One, section 2 and Article Two, section 2 of the appellant's constitution states:

"that Man's best evidence of God is the God he finds within himself, that the Author of this universe intended life to thrive within it, and that the Church is formed to espouse such evidence of the Supreme Being and Spirit as may be knowable to Man and that it is the hope of Man that the teachings of the Church will bring a greater tranquility to the State and thus the better order and survival to Man upon this Planet".

In September 1965 a Victorian Government Board of Enquiry reported that "Scientology is evil; its techniques evil; its practice a serious threat to the community, medically, morally and socially; and its adherents sadly deluded and often mentally ill ... In a community which is nominally Christian, Hubbard's disparagement of religion is blasphemous and a further evil feature of scientology" (*Report of the Board of Inquiry into Scientology* (1965) pp. 1, 152). This report led to the *Psychological Practices Act 1965* (Vic.) which made the teaching of Scientology an offence (s.31(1)). However that Act did not apply to "anything done by any person who is a priest or minister of a recognized religion in accordance with the usual practice of that religion" (s.2(3)). These provisions were repealed on 29 June 1982 (*Psychological Practices (Scientology) Act 1982* (Vic.)).

The Church was recognized as a religious denomination under s.26 of the *Marriage Act 1961* on 15 February 1973 (*Commonwealth of Australia Gazette No.20*) and has been reproclaimed a number of times since, the last being 30 August 1983 (*Commonwealth of Australia Gazette No.G34*). It is granted exemption as a religious institution from payroll tax in South Australia, Western Australia, New South Wales and the Australian Capital Territory.

The Supreme Court of Victoria. The Commissioner of Payroll Tax having rejected the applicant's claim for exemption, the Victorian Supreme Court both at first instance (Mr Justice Crockett) and on appeal (Chief Justice Young, Justices Kaye and Brooking decided that the applicant was not a religious institution (*Church of the New Faith v. Commissioner for Pay-Roll Tax* [1983] V.R. 97). Mr Justice Brooking held against the applicant on the basis that it was illegal by reason of the *Psychological Practices*

Act. In the Supreme Court and on this appeal the respondent declined to rely upon that reasoning, and it may be disregarded. The other justices held against the applicant by applying unacceptable criteria.

Belief in God. Mr Justice Crockett held that "religion is essentially a dynamic relation between man and a non-human or superhuman being" (p.111). He found that the doctrines of Scientology were not sufficiently concerned with such "a divine superhuman, all powerful and controlling entity" (p.110). Mr Justice Kaye found absent an "acknowledgment of a particular deity by all members of the Church ... members of the Church might hold beliefs in, and have a personal relationship with, a different supernatural being" (p.134).

Most religions have a god or gods as the object of worship or reverence. However, many of the great religions have no belief in god or a supreme being in the sense of a personal deity rather than an abstract principle. Theravadan Buddhism, the Samkhya school of Hinduism and Taoism, are notable examples. Though these religions assert an ultimate principle, reality or power informing the world of matter and energy, this is an abstract conception described as unknown or incomprehensible. Idols or symbols representing it are contemplated (Woodroffe "The Psychology of Hindu Religious Ritual" in *Sakti and Sakta: Essays and Addresses* (1969) p.303). This meditation (rather than prayer or worship) is said to stimulate an awareness of the divine peculiar to the individual concerned. However in practice many adherents worship these images, representations and symbols as personal deities.

In the United States of America, belief in god or a supreme being is no longer regarded as essential to any legal definition of religion (*United States v. Kauten* 133 F.2d (1943) 703; *United States v. Ballard* 322 U.S. (1944) 78 and *Welsh v. United States* 398 U.S. (1970) 333). There, it is now sufficient that a person's beliefs, sought to be legally characterized as religious, are to him or her of "ultimate concern" (*United States v. Seeger* 380 U.S. (1965) 163). Buddhism, Taoism, Ethical Culture and Secular Humanism have been held to be religions (see *Torcaso v. Watkins* 367 U.S. (1961) 488, 495 n.11; *Washington Ethical Society v. District of Columbia* 249 F.2d (1957) 127; *Fellowship of Humanity v. County of Alameda* 315 P.2d (1957) 394).

The doctrine of a personal god has been seen by many as an unnecessary part of religious belief. Einstein declared:

"In their struggle for the ethical good, teachers of religion must have the stature to give up the doctrine of a personal God, that is, give up that source of fear and hope which in the past placed such vast power in the hands of priests. In their labours they will have to avail themselves of those forces which are capable of cultivating the Good, the True, and the Beautiful in humanity itself" (*Science and Religion in The Odyssey Reader* (1968) p.284).

Similarly Bertrand Russell stated:

"The whole conception of God is a conception derived from the ancient Oriental despotisms. It is a conception quite unworthy of free men. When you hear people in church debasing themselves and saying that they are miserable sinners, and all the rest of it, it seems contemptible and not worthy of self-respecting human beings. We ought to stand up and look the world frankly in the face" (*Why I am not a Christian*) (1976) p.17).

Julian Huxley wrote: "religion of the highest and fullest character can co-exist with a complete absence of belief in revelation in any straightforward sense of the word, and of belief in that kernel of revealed religion, a personal god" (*Religion Without Revelation* (1957) p.1).

Writings and Beliefs. The works of Scientology were referred to as "obscure", "tautologous", "ambiguous", "often ungrammatical" and "contradictory" by Chief Justice Young who stated "It is difficult to avoid the conclusion that one of the reasons for writing in this way is that it permits an explanation of the functions or purposes of the organization to be trimmed to whatever advantage is sought or can be obtained" (p.116).

Most religions have a holy book, sacred songs or stories, holy tablet or scroll containing a set of beliefs or code of conduct, often supposed to have been inspired by, or even given directly to a founder, by a god.

However, because the scriptures or writings of most religions are about the supernatural, mysteries and psychic

events, as well as often obsolescent theories about nature, they are frequently contradictory. Thomas Paine exposed the numerous contradictions in the Christian Bible (*The Age of Reason - Being An Investigation of True and Fabulous Theology* (1938)). Ambiguities, obscurities and contradictions are found in the holy books of many other religions. Religious language is frequently deliberately obscure and symbolic so as to hide mysteries from the uninitiated and communicate effectively with the unconscious mind. The oracle at Delphi was famous for prophecies so obscure that they could later be interpreted as having predicted whatever occurred. In any event, much writing is "obscure", "tautologous", "ambiguous", "often ungrammatical" and "contradictory", especially in philosophy, the social sciences, psychiatry and law.

Chief Justice Young also held that "the ideas with which scientology deals are more concerned with psychology than with ultimate truth ... man's place in the universe, or with fundamental problems of human existence" (p.125). The evidence does not sustain this finding. Further, psychology does concern itself with those subjects. Modern psychological studies suggest that levels of awareness or consciousness giving meaning and purpose to life, once regarded as exclusive to religion and shrouded in mystery and superstition, can be achieved by non-religious insights.

Revision of Beliefs. The respondent contended that the fact that in its early writings Scientology claimed to be a science rather than a religion indicates that its subsequent desire to be a religion cannot be genuine (Chief Justice Young, p.123, Mr Justice Kaye, p.135). Mr Justice Crockett stated "The very adroitness - and alacrity - with which the tenets or structure were from time to time so cynically adapted to meet a deficiency thought to operate in detracton of the claim to classification as a religion serve to rob the movement of that sincerity and integrity that must be cardinal features of any religious faith" (p.109).

There are many groups now recognized as religions which when they began claimed not to be. The development of Scientology resembles that of Christian Science. Mary Baker Eddy, the founder, claimed to deal with the development of human personality in a scientific way. Persecution, defections and associated lawsuits threatened to destroy what Mrs Eddy saw as her contribution to the welfare of humanity. So she took

advantage of the legal privileges extended to religion by obtaining a formal charter for her Church of Christ (Scientist) in 1879 (see Ahlstrom *A Religious History of the American People* (1972) p.1022). Many religions alter their beliefs to retain their social standing and acceptability. Most religions are not static but evolve in belief and structure as a result of internal and external pressure. As science has advanced, many religious beliefs have been abandoned or reinterpreted. When followers become sceptical, dogma tends to be reinterpreted as allegory, religious fact as fantasy and religious history as myth.

Code of Conduct. Chief Justice Young found that Scientology could also not be considered a religion because its doctrines contained "no complete or absolute moral code" (p.125). Most religions contain a code of principles regulating the spiritual and social activities of their members. Many codes confer sacred status on activities such as eating, sexual intercourse, marriage, birth and burial. Religious codes of conduct are usually so difficult to observe that the followers constantly infringe and must undergo some penance, either spiritual or financial, to placate the god, to overcome their feelings of guilt or to maintain their place within the religion. The idea of a "complete or absolute moral code" is however alien to the classical forms of religions such as Hinduism or Buddhism. In those, men and women do not offend against a set of principles but against themselves - reaping the karmic consequences of their actions. Schumann writes "Buddhism does not know of 'sin', i.e. offence against the commandments of ... a god. It only distinguishes between wholesome ... and unwholesome ... deeds - those leading towards liberation and those leading away from it" (*Buddhism An Outline of its Teachings and Schools* (1973) p.52).

Growth from traditional Religions. The superimposition of the "forms" and "ceremonies" of established religions (Chief Justice Young, p.126), the "calculated adoption of the paraphernalia, and participation in ceremonies, of conventional religion" were said to be "no more than a mockery of religion" (Mr Justice Crockett, p.109). But throughout history new religions have adopted and adapted the teachings, symbols, rituals and other practices of the traditional religions.

Buddha drew upon the earlier teachings of Hinduism, as did many Greek religious teachers such as Apollonius of

Tyana and Pythagoras. Mohammed drew upon Christian teachings and there is evidence in the Dead Sea and the Nag Hammadi Scrolls that the Christian teachings were based on those of the Essenes. Many religions copied from earlier religions the golden rule of respect for others.

Organized Christianity took over many of the forms and ceremonies of the pagan fertility rite of Easter (with its connections to the full moon and the northern spring equinox) and the winter solstice celebration on 25 December under the ancient calendars, the birth day of the solar deity Mithra. Leaders of the Christian Church from St. Paul to St. Augustine recognized the similarities between the Christian ceremonies of baptism and the eucharist and the Mysteries of Mithra, Cybele and Attis involving partaking of bread, fish and wine. As Charles Bradlaugh said "No religion is suddenly rejected by any people; it is rather gradually outgrown ... A superseded religion may often be traced in the festivals, ceremonies, and dogmas of the religion which has replaced it" (*Humanity's Gain From Unbelief* (1929), p.1-2).

Propitiation and Propagation. Chief Justice Young stated that there were "no elements of propitiation or propagation in any of the ceremonies" (p.126) of the Church of the New Faith. Blood sacrifices and other forms of propitiation by gift or worship were prominent in older religions. Modern religions however tend to replace actual with notional sacrifice and to replace propitiation or appeasement with concepts such as "making peace with ones soul". Absence of propitiation from Scientology only indicates that Scientology is somewhat removed from the primitive religions.

In the older religions propagation occurred in various ways, by natural increase amongst the adherents with which fertility rites were associated, and by conversion of non-believers. Indoctrination or "brainwashing" is typical of many religions. Often this takes place during an intense period of initiation. Adherence and conversion are also achieved in most religions by regular meetings, ceremonies and rituals. Special ceremonies may be held at times of physiological significance, such as puberty; times critically important for agriculture or natural food sources such as the onset of spring or midsummer; days historically important to the religion such as the founder's birth or death, or for astrological reasons. Scientology appears to conform to this general pattern of propagation.

Public Acceptance. Chief Justice Young stated: "I do not think that there has been in Victoria such public acceptance of scientology as a religion as requires the Court to treat it as such" (p.126). He said that the word "scientology" was not to be found in any "reputable dictionary" (p.115) but this was an error. The major Australian dictionary, *The Macquarie Dictionary* (1981), refers to Scientology as an "applied philosophy", and in the addenda to the *Shorter Oxford English Dictionary* (1977) it is referred to as "a religious system based on the study of knowledge, and seeking to develop the highest potentialities of its members". It is also referred to in the standard work the *Abingdon Dictionary of Living Religions* (1981) as a "religious movement founded in 1952 by L. Ron Hubbard, U.S. science fiction writer and author of the best-selling book *Dianetics* (1950), which launched a popular self-enhancement movement out of which Scientology emerged".

Most religions seek if not to convert the public at least to secure its acceptance of their beliefs. Nearly all religions commence as minority groups, often gathering around the teachings of one seemingly inspired individual. Their rise to public acceptance is normally very slow and difficult.

As the United States Supreme Court stated, a test of public acceptability would create "a danger that a claim's chances of success would be greater the more familiar or salient the claim's connection with conventional religiosity could be made to appear" (*Gillette v. United States* 401 U.S. (1971) 437, 457). The proliferation of religions and religious sects would present difficulties for any test based on public acceptability. There are now about 500 distinct groups in Australia (unpublished research of Tillett, Department of Religious Studies, University of Sydney (1982); see also list of recognized denominations under s.26 of the *Marriage Act 1961*, *Commonwealth of Australia Gazette* No.G34, 30 August 1983).

Claim to be the true faith. Chief Justice Young stated:

"It seems clearly possible on the evidence to embrace scientology whilst remaining an adherent of a recognized religion such as Roman Catholicism. There is no claim that scientology is the true faith. There is no obligation to accept a body of doctrine which is regarded as essential or even important" (p.127).

Scientology may be unusual in not claiming to be the one true faith. However, there have been many religious or quasi-religious groups which proclaim that their adherents may also adhere to other religions such as the Quakers, the Latitudinarians, the Theosophists, the Baha'is and the Zen Buddhists. Classical Hinduism in theory adopts the proposition "Truth is one; sages call it by different names" and embraces religious groups of widely different belief and structure.

The faith of members of various religions has inspired concern for others which has often been reflected in humanitarian and charitable works. However, the claim to be the one true faith has resulted in great intolerance and persecution. Because of this, the history of many religions includes a ghastly record of persecution and torture of non-believers. Hundreds of millions of people have been slaughtered in the name of god, love and peace. In the effort to uphold "the one true faith" courts have often been instruments for the repression of blasphemers, heretics and witches. Ingersoll claimed that such religious persecution sprung "from a due admixture of love towards God and hatred towards man" (*Lectures and Essays* (1956) p.42).

Commercialism. Chief Justice Young stated: "Nothing in the way the ideas of scientology are exploited commercially suggests that it is a religion. Indeed the considerations referred to under this heading might be thought to point clearly to the opposite conclusion" (p.128). The commercial operations were: (i) sale of services to members (ii) charges for instruction leading to ordination (iii) financial arrangements with overseas headquarters and (iv) registration as trade names words such as "Scientology" and other steps taken to protect trade marks, trade-names, patents and copyright, all owned by the founder, Mr Hubbard.

Most organized religions have been riddled with commercialism, this being an integral part of the drive by their leaders for social authority and power (in conformity with the "iron law of oligarchy"). The amassing of wealth by organized religions often means that the leaders live richly (sometimes in palaces) even though many of the believers live in poverty. Many religions have been notorious for corrupt trafficking in relics, other sacred objects, and religious offices, as well as for condoning "sin" even in advance, for money.

The great organized religions are big businesses. They engage in large scale real estate investment, money-dealing and other commercial ventures. In country after country, religious tax exemption has led to enormous wealth for religious bodies, presenting severe social problems. These often precipitate suppression of the religion or its leadership and expropriation of its wealth (see Larson *Church Wealth and Business Income* (1965); Larson and Lowell *The Religious Empire* (1976)). In the United States of America, where tax exemptions (but not subsidies) are available, Dr Blake former President of the National Council of Churches stated that in view of their favoured tax position America's Churches "with reasonably prudent management, ... ought to be able to control the whole economy of the nation within the predictable future" (*Christianity Today*, vol.3, No.22 (1959) p.7). Commercialism is so characteristic of organized religion that it is absurd to regard it as disqualifying.

Special Leave. Christianity claims to have begun with a founder and twelve adherents. It had no written constitution, and no permanent meeting place. It borrowed heavily from the teachings of the Jewish religion, but had no complete and absolute moral code. Its founder exhorted people to love one another and taught by example. To outsiders, his teachings, especially about the nature of divinity, were regarded as ambiguous, obscure and contradictory, as well as blasphemous and illegal. On the criteria used in this case by the Supreme Court of Victoria, early Christianity would not have been considered religious.

On this appeal, the Court was informed that following the Supreme Court's decision, the Victorian Commissioner of Probate Duties has refused to treat the Seventh Day Adventists as a religious institution. The Seventh Day Adventists are generally accepted as religious. They have been in Australia since 1885, and were "enthusiastic and dedicated proponents of liberty of conscience, and of the strict separation of Church and State" and campaigned vigorously for the introduction of a freedom of religion clause into the Constitution of the Commonwealth (see Richard Ely *Unto God and Caesar* (1976) p.27). The approach of the Supreme Court of Victoria, if allowed to prevail, would result in intolerable religious discrimination. The case for granting special leave to appeal is overwhelming.

CONCLUSION

The applicant has easily discharged the onus of showing that it is religious. The conclusion that it is a religious institution entitled to the tax exemption is irresistible.) won

The Commissioner should not be criticized for attempting to minimize the number of tax exempt bodies. The crushing burden of taxation is heavier because of exemptions in favour of religious institutions, many of which have enormous and increasing wealth.

Special leave to appeal should be granted and the appeal allowed. The applicant's objection to the assessment of payroll tax should be upheld. The Commissioner should pay the applicant's costs at every level.)

APPENDIX OF ADDITIONAL REFERENCESFinancial Advantages of Religion

Picarda "New Religions as Charities" *New Law Journal*, vol.131 (1981) p.436; Emory and Zelenak "The Tax Exempt Status of Communitarian Religious Organizations: An Unnecessary Controversy?" *Fordham Law Review*, vol.50 (1982) p.1085.

Scepticism and Religion

Cornford *Greek Religious Thought* (1923) p.134; Voltaire *Philosophical Dictionary* (Gay trans. 1962); Torrey *The Spirit of Voltaire* (1963) pp.263, 264; Baumer *Religion and the Rise of Scepticism* (1960); Nielsen *Scepticism* (1973); Chadwick *The Secularization of the European Mind in the Nineteenth Century* (1975); Lecky *History of the Rise and Influence of the Spirit of Rationalism in Europe* (1910); Redwood *Reason, Ridicule and Religion* (1976); Campbell "The Character of Australian Religion" *Meanjin Quarterly*, vol.36 (1977) p.178; Clark *Select Documents in Australian History 1851-1900* (1971) pp.797, 811-812; Wilson "The Church in a Secular Society" in *The Shape of Belief - Christianity in Australia Today* (Harris, Hynd and Millikan eds. 1982) p.1; Mol *Religion in Australia - A Sociological Investigation* (1955); Manning Clark *A Discovery of Australia: Boyer Lectures* (1976) p.13; Facey *A Fortunate Life* (1981) p.317.

Illegality of Religious Practices

Adelaide Company of Jehovah's Witnesses Incorporated v. The Commonwealth (1943) 67 C.L.R. 116; *Reynolds v. United States* 98 U.S. (1878) 145; *The Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States* 136 U.S. (1889) 1.

The Origins of Religion

Solecki "The Implications of the Shanidar Cave Neanderthal Flower Burial" *Annals of the New York Academy of Sciences* vol.293 (1977) p.114; Noss *Man's Religions* (6th ed. 1974); Haddingham *Circles and Standing Stones* (1975); Finegan *The Archeology of World Religions* (1952); Berndt *Australian Aboriginal Religion* (1974); Elkin *Aboriginal Men of High Degree* (1981); Law *Age of the Rgveda* (1965).

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Magic, Science and Religion

Lucretius "On The Nature of Things" in *Selections From Hellenistic Philosophy* (Clark ed. 1940) p.44; Hume "The Natural History of Religion" in *Hume on Religion* (Wollheim ed. 1963) p.31; Frazer *The Golden Bough - A Study in Magic and Religion* (1954); Levy-Bruhl *Primitive Mentality* (1923); Malinowski *Magic, Science and Religion and Other Essays* (1948); Toynbee *A Study of History* (Somervell Abridgement 1947) p.482.

Sociological Approach to Religion

Durkheim "The Elementary Forms of the Religious Life" in *Durkheim on Religion* (Pickering ed. 1975) p.102; Harrison *Themis - A Study of the Social Origins of Greek Religion* (1927); Weber *The Sociology of Religion* (Fischhoff trans. 1963); Weber *The Protestant Ethic and the Spirit of Capitalism* (Parsons Trans. 1968); Wilson *Magic and the Millennium - A Sociological Study of Religious Movements of Protest Among Tribal and Third-World Peoples* (1973).

Psychological Approach to Religion

Philp *Freud and Religious Belief* (1956) p.44; Jung "The Archetypes of the Collective Unconscious" in *Collected Works* vol.7 (1953) p.88; Jung "The Archetype in Dream Symbolism" in *Collected Works*, vol.18 (1977) p.227; Clark *The Psychology of Religion* (1958); Shweder "Aspects of Cognition in Zinacanteco Shamans: Experimental Results" in *Reader in Comparative Religion - An Anthropological Approach* (Lessa and Vogt eds. 1979) p.327.

Belief in a Personal God

Helmuth von Glasenapp *Buddhism - A Non-Theistic Religion* (1970); Chakravarti *Origin and Development of the Samkhya System of Thought* (1975) p.40; Keith *The Samkhya System* (1924) p.23; Smart *The Religious Experience of Mankind* (1976); Parrinder *Worship in the World's Religions* (1961); Kumarappa *The Hindu Conception of the Deity* (1934).

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Revision of Beliefs

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Code of Conduct

Eliade *The Sacred and the Profane - The Nature of Religion* (1959); Eliade *From Primitives to Zen - A Thematic Sourcebook of the History of Religions* (1977).

Growth From Traditional Religions

Upadhyaya *Early Buddhism and the Bhagavadgita* (1971); Groves Campbell *Apollonius of Tyana* (1968); Radhakrishnan *Eastern Religions and Western Thought* (1940) pp.142, 143; Parrinder *Jesus in the Qur'an* (1965); Becker *Christianity and Islam* (1974); Helmbold *The Nag Hammadi Gnostic Texts and the Bible* (1967); Wilson *The Dead Sea Scrolls 1947-1969* (1969); Dupont-Sommer *The Essene Writings from Qumran* (1962); Kennedy *St Paul and the Mystery-Religions* (1913); Gulgnebert *Ancient, Medieval and Modern Christianity - The Evolution of a Religion* (1961) p.73; Barnes *The Rise of Christianity* (1948).

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"Colloquium: Alternative Religions: Government Control and the First Amendment" *New York University Review of Law and Social Change*, vol.9 (1980).

Religions not Claiming to be the One True Faith

Emmott *A Short History of Quakerism* (1923); Muller *Theosophy or Psychological Religion* (1898); Gaver *The Baha'i Faith* (1967); Dom Aelred Graham *Zen Catholicism* (1963); *The Asian Journal of Thomas Merton* (Burton, Hart and Laughlin eds. 1973); J.K. Kadowaki s.j. *Zen and the Bible A Priest's Experience* (Rieck trans. 1977); *Hindu Scriptures* (ed. Zaehner 1966) p.vi.

Intolerance

Glover *The Conflict of Religions in the Early Roman Empire* (1910); Lea *A History of the Inquisition of the Middle Ages* (1906); Hall *Law, Social Science and Criminal Theory* (1982) Ch.2 "Religious Persecution"; Kamen *The Rise of Toleration* (1967); Preston King *Toleration* (1976); *A History of the Ecumenical Movement 1517-1948* (Rouse and Neill eds. 1967); Hudson *The Ecumenical Movement in World Affairs* (1969).

Commercialism

Ullmann *A Short History of the Papacy in the Middle Ages* (1972); *Theological Principles Governing The Church's Use of Its Property*, Diocese of Sydney Synod Report (1979); Lea *A History of Auricular Confession and Indulgences in the Latin Church* (1896).

WILSON and DEANE JJ. The Commissioner of Pay-roll Tax (Vic.) ("the Commissioner") disallowed an objection by The Church of the New Faith Incorporated ("the applicant") to an assessment of pay-roll tax under the Pay-roll Tax Act 1971 (Vic.) ("the Act") in respect of the period 1 July, 1975 to 30 June, 1977. In so doing, he refused to accept that the applicant was, for the purposes of s.10(b) of the Act in the form applicable to that period, a "religious or public benevolent institution". At the request of the applicant, the Commissioner treated its objection as an appeal and referred the matter to the Supreme Court of Victoria. In that Court, Crockett J. and, on appeal, the Full Court (Young C.J., Kaye and Brooking JJ.) concluded that the applicant was not a "religious institution" for the purposes of the Act and that the Commissioner's assessment was therefore correct. The applicant seeks special leave to appeal from the decision of the Full Court. On the hearing of the application for special leave the parties have presented the arguments upon which they wish to rely in the event that leave is granted.

Section 10(b) of the Act, in the form applicable in respect of the relevant period, provided that the wages liable to pay-roll tax under the Act did not include wages paid or payable:

"(b) by a religious or public benevolent institution, or a public hospital;"

The Pay-roll Tax Act 1979 amended the Act by limiting the exemption of wages paid or payable by a religious institution to wages paid or payable by such an institution "to a person during a period in respect of which the institution satisfies the Commissioner that the person is engaged exclusively in religious work of the religious institution".

The applicant was incorporated in South Australia in 1969 under the name "The Church of the New Faith Incorporated" pursuant to the provisions of the Associations Incorporation Act, 1956-1985 (S.A.). It subsequently changed its name to "The Church of Scientology Incorporated" but remains registered as a foreign company in Victoria under its original name. Its members are persons who accept and follow the writings of Lafayette Ronald Hubbard ("Hubbard"). Hubbard is an American who has acquired a substantial following in, inter alia, the United States, the United Kingdom and Australia. The estimate given of the number of his followers in Victoria was between five and six thousand. Evidence was given

that total membership was about 150 thousand in Australia and eight million throughout the world. The system or conglomeration, depending on one's viewpoint, of the ideas and practices contained in and advocated by his writings is known as "Scientology" and those who believe in those ideas and practices are known as "Scientologists". Hubbard's first two Scientology books were "Dianetics: The Modern Science of Mental Health" which was published in 1950 and "Science of Survival" which was published in 1951. He has written many subsequent books.

Senior counsel for the Commissioner expressly conceded, for the purposes of the appeal, that, if Scientology is properly to be seen as a religion in Victoria, the applicant was, for relevant purposes, a "religious institution". The appeal was argued by both sides on the basis that the only real issue is whether Scientology is, for relevant purposes, a religion in Victoria. With some hesitation, we shall approach the matter on that basis. In so doing however, we should not be understood as indicating a concluded view that that basis is necessarily a completely sound one. In that regard, it is not apparent to us that it is clear beyond argument either that the reference to an "institution", in the context of s.10(b), should not be construed as a reference to a particular establishment as distinct from the body of members, whether incorporated or unincorporated, of a particular religion or that the adjective "religious" in the phrase "religious institution" postulates an association between the relevant institution and what can be identified as a particular religion.

The "Constitution" of the applicant is in evidence. Its contents are appropriate to a religious organization. It refers to the applicant as "the Church" and provides that the applicant shall be comprised of persons admitted to membership "who accept the objects of the Church and who profess the belief that Man's best evidence of God is the God he finds within himself, that the Author of this Universe intended life to thrive within it, and that the Church is formed to espouse such evidence of the Supreme Being and Spirit as may be knowable to man and who . . . by their use of the Church hope to bring a greater tranquillity to the State and better order and survival to Men upon this planet" (Article One, Section 2 and repeated in Article Two, Section 2 below). The Constitution provides that a member may be "excommunicated from the Church" by expulsion for a number of reasons, including failure to pay dues or tithes, disobedience and having been "guilty of heresy" (Article One, Section 3), and indicates that the

funds of the applicant are to be applied essentially for what might be generally described as the purposes of Scientology. It defines "Scientology" as meaning "the teachings, doctrines and statements of faith set out in Sections 1 to 4 of Article Two hereof ...". Those Sections of Article Two are as follows:

"Section 1 Religion of Scientology

To present and uphold the religion of Scientology as founded by the Church and as further developed by the Church as prescribed herein to the end that any person wishing to participate in its communion and fellowship may derive the greatest possible good of the spiritual awareness of his Beingness, Doingness and Knowingness.

Section 2 Doctrines of the Church.

To encourage religious faith and propagate the doctrines that Man's best evidence of God is the God he finds within himself, and that the Author of this Universe intended life to thrive within it, and that the Church is formed to espouse such evidence of the Supreme Being and Spirit as may be knowable to Man and that it is the hope of Man that the teachings of the Church will bring a greater tranquillity to the State and thus the better order and survival to Man upon this Planet.

Section 3 The Creed

To teach and expound the beliefs :

- (a) That God works within Man his wonders to perform.
- (b) That Man is his own soul, basically free and immortal but deluded by the flesh.
- (c) That Man has a God given right to his own life, reason, beliefs, mode of thought and/or thinking and to free and open communication.
- (d) That the human spirit is the only truly effective therapeutic agent available to Man.
- (e) That civilization can endure only so long as both spiritual and material needs find place within its structure.

- (f) That civilization is lost when God and the Spirit are forgotten by its leaders and its people.
- (g) That Man and the Nations of Man carry with them their own salvation and teachings exist sufficient to effect it.
- (h) That the Church exists to assist the strong and the weak, to suppress the wrongdoer and to champion the right and godly. Its mission is to carry to Man revelations and teachings and practices of the present and ages past and to assist him, his family and communities to live in greater peace and harmony.
- (i) That it is within the practice, teachings and tenets of the Church for the healing of the sick and suffering to be accomplished by prayer and other mental or spiritual means without resort to drugs or material remedy.
- (j) That the Holy Book of the Church consists of a collection of the works of and about the Great Teachers, including the work of St. Luke.
- (k) That the Saints of the Church are the messiahs and religious philosophers.
- (l) That the specific teachings of the Church concerning its Holy Book and its contributions made in more recent times on the Mind and Spirit are a result of scientific investigations concerning the human spirit and the physical universe.

Section 4 Religious Unity

To expound the essential unity of all religions and religious faith and the existence of a single Supreme Superhuman Power."

Two members of the applicant gave evidence on its behalf. The first, Mrs. Elaine Isobel Allen, was "responsible for the administration of the affairs" of the applicant in Victoria. The second, Mr. Clayton Cockerill, was "a senior administrative officer" of the applicant in Australia. It is common ground that Mrs. Allen and Mr. Cockerill are among the half dozen leading figures in the organization of Scientology within Australia. Each described herself or himself as a "Minister of Religion" of

The main affidavit sworn by Mrs. Allen contains some general information about the applicant and about the beliefs and activities of its members. Paragraph 4 reads as follows:

"As appears from Article 2 of the constitution and general rules of the Appellant the objects of the Church includes the object of presenting and upholding the religion of Scientology. The religion of Scientology was founded by Lafayette Ronald Hubbard, who is the spiritual leader of the adherents of the religion, including its adherents in Australia who are members of the Appellant. Now produced and shown to me and marked with the letters 'EIA4' is the work entitled 'The Scientology Religion' by the said Lafayette Ronald Hubbard. The said work is regarded by the trustees, ministers and members of the Appellant as authoritative and is adhered to by them in their conduct of the affairs of the Appellant and in their conduct of the religion of Scientology in Victoria, insofar as they are able to do so. Insofar as the said book contains statement of fact, I believe the same to be true. Insofar as the same contains statements of belief, the said statements of belief are the beliefs upon which the Appellant's activities are founded, and are beliefs which are adhered to by the trustees, the ministers and members of the Appellant, in Victoria. Insofar as the said book contains statements of opinions of persons quoted in the said book, the same are as I verily believed, the opinions [sic] honestly and sincerely held by such persons".

Mrs. Allen's statement to the effect that the work "The Scientology Religion" was regarded as authoritative by the trustees, ministers and members of the applicant and was adhered to by them in their conduct of the affairs of the applicant and in their conduct of Scientology in Victoria was not challenged expressly in cross examination nor was it controverted by other evidence. In essence, the case for the respondent was to point up internal inconsistencies in this and other materials written by Hubbard and to use such an analysis as a basis for challenging that their system of beliefs and practices constituted a genuine religion. Examination of "The Scientology Religion" discloses that it has been prepared with a conscious purpose of persuading the reader that Scientology is a religion. Plainly, it must be treated with some caution

especially as regards matters, such as the repeated assertion that Scientology is a religion, on which it conflicts with statements to be found in other Scientology works. Since the evidence is, however, that this book is regarded as authoritative by Scientologists in Australia, particular attention needs to be paid to it. A number of matters, confirmed by reference to other material which is in evidence, emerge from it.

Prominent among Hubbard's theories which constitute the basis of Scientology are doctrines of reincarnation in human form and the immortality of what is called the "thetan" which is represented as being an external force or spirit controlling the human body. Scientology is represented as concerning "survival" not in terms of the body but in terms of the spirit: "the thrust of survival is away from death and towards immortality". The ultimate goal and central concern is the escape of the "thetan" or spirit from the bondage of the matter, energy, space and time ("MEST") of the physical universe. Life is said to be viewed, in Scientology, in terms of "Eight Dynamics - self is the first dynamic, the Supreme Being is the eighth dynamic". Apart from the assertion that the Supreme Being constitutes the eighth "dynamic", there is little attempt at definition of the Supreme Being: on the other hand, much of Scientology writing is concerned with what is described as "progress upward toward survival on higher levels" which is consistently said to be "progress as well toward God" (see *Science of Survival*, Book II p. 244; *The Scientology Religion*, p. 29). The system or conglomeration of ideas which is represented as constituting Scientology is presented as influencing the conduct and lives of those who accept them. Indeed, the "auditing" or "counselling" procedure to which initiates are subjected is plainly intended to produce permanent effects involving what some outsiders might see as brainwashing and disorientation. The practices of the applicant include a form of service built around "a sermon" on matters such as "what a person is - body, mind, spirit" and ceremonies for particular occasions, namely, naming, wedding and funeral. The model forms of the ceremonies for particular occasions include exhortations about conduct and intimations of immortality.

The material in evidence discloses that up until at least 1965 Hubbard had not, in his writings, described Scientology as a religion. Indeed, the notion that Scientology was a religion was emphatically rejected in some writings of Scientologists. It would seem that the present day service and ceremonies, while described in detail in an

American publication in 1959, were not celebrated in Australia before the late 1960's. During the 1970's there were obviously concerted efforts to portray Scientology as a religion. Hubbard's writings commenced to stress the religious nature of the ideas he professed. An adhesive page headed by an emblem incorporating a cross has been affixed to the fly leaf of previously published books. The printed material on this adhesive page refers to Scientology as a "religious philosophy", to the "Mission of the Church" and to the "positive and effective religion of Scientology" and describes Hubbard's writings as "religious" and an electrical device (the "E Meter"), which is used in "auditing", as a "religious artifact". Those most actively concerned in the movement came to be called "ordained Ministers" or "Ministers of Religion" and began to wear conventional clerical garb and ornaments such as a clerical collar and the emblem of a cross.

There are two suggested explanations of the appearance in Scientology writings of assertions that Scientology is a religion and of the introduction of services and ceremonies as part of Scientology practices. The first is that there was an evolution in the system or conglomeration of ideas leading to a greater emphasis on the spiritual and that, in the conviction that Scientology had become a religion, it was thought appropriate to incorporate into it the type of practices which were ordinarily accepted as appropriate to a religion or religions in the communities where the numbers of Scientologists were significant. The evidence of Mr. Cockerill and Mrs. Allen indicates that this accorded with their belief of what had occurred. The second suggested explanation is that the motivation of those responsible for the appearance of assertions that Scientology is a religion and for the introduction of a service, ceremonies and other external indicia of a religion was no more than a cynical desire to present Scientology as what it was not for such mundane purposes as acquiring the protection of constitutional guarantees of freedom of religion or obtaining exemption from the burden of taxing laws. It was this explanation which was accepted by the learned trial judge. In strong language - "sham", "bogus", "mockery", "masquerade", "pretensions" and "charade" - his Honour concluded: that the creed and services described in a 1959 booklet called "Ceremonies of The Founding Church of Scientology" which had been published in America "played absolutely no part in the teaching or practice of scientology until the late nineteen sixties"; that "those so-called ceremonies were devised and published as a device to enable, with such attendant advantages as would thereby accrue, scientology to be paraded as a church in the

United States" and should properly be described as a "masquerade" and "charade"; that a Victorian Board of Enquiry Report "that was uncompromising in its denunciation of scientology as a profoundly evil movement from which gullible - and the not so gullible - members of the community required protection" had "gained publicity in countries and States where the organization was entrenched"; that the leaders of the Scientology movement succumbed to the temptation to avoid "destruction" of the movement by simulating, so as to become accepted as, a religion; that "the ecclesiastical appearance now assumed by the organization is no more than colourable in order to serve an ulterior purpose"; and, ultimately, that Scientology

"... is, in relation to its religious pretensions, no more than a sham. The bogus claims to belief in the efficacy of prayer and to being adherent to a creed divinely inspired and also the calculated adoption of the paraphenalia, and participation in ceremonies, of conventional religion are no more than a mockery of religion. Thus scientology as now practised is in reality the antithesis of a religion. The very adroitness - and alacrity - with which the tenets or structure were from time so cynically adapted to meet a deficiency thought to operate in detracton of the claim to classification as a religion serve to rob the movement of that sincerity and integrity that must be cardinal features of any religious faith".

Perusal of the whole of the evidence at first instance makes clear that, apart from some questions asked of Mr. Cockerill about his having acquiesced in being sworn on a Christian Bible, there was no suggestion made in the cross examination of Mrs. Allen and Mr. Cockerill that they were other than sincere in the beliefs they professed. Nor does the judgment of the learned trial judge contain any finding that any significant number of the more than five thousand Victorian members of the applicant was other than genuine and sincere. To the contrary, his Honour mentioned the "zeal akin to religious fervour" with which the adherents of Scientology embraced its teachings and indicated acceptance of the proposition that "there are many now who devoutly believe in the re-structured doctrines". In the course of argument in this Court, senior counsel for the Commissioner disclaimed any suggestion that Mr. Cockerill or Mrs. Allen was other than sincere and conceded that, however mistaken, inconsistent, illogical and even harmful some may think those beliefs and practices to be, the great majority of the Australian members of the applicant are sincere and

genuine in their acceptance of current Scientology writings and practices.

It was submitted on behalf of the applicant that there was no proper basis in the evidence for the strongly adverse findings of Crockett J. as to the sincerity of Hubbard and "those who have worked with, or for, him". In the view we take, it is neither necessary nor desirable to embark upon a consideration of that question. Once it is accepted that the applicant is an Australian organization of members who believe and follow the teachings and practices of Scientology as set forth in the current literature, it is not critical to the outcome of the present appeal that the members of the applicant in Victoria may be gullible or misguided or, indeed, that they may be or have been deliberately misled or exploited. That is not to deny that there are cases where what is put forward as being a religion cannot properly be so characterized for the reason that it is, in truth, no more than a parody of religion or a sham: the claimed religion of "Chief Boo Hoo" and the "Boo Hoos" in *United States v. Kuch* 288 F. Supp. 439 (1968) provides an obvious example of such a parody. Nor is it to deny that there may be cases in which the fraud or hypocrisy of the founder and leader of a particular system of claimed beliefs and practices constitutes the straw that weighs the balance against characterization as a religion. It involves no more than the conclusion that in the present case, where one has an organization consisting of thousands of Australians who genuinely believe and follow the current writings and practices of Scientology, the question whether Scientology is a religion in Victoria falls to be answered by reference to the content and nature of those writings and practices and to the part Scientology plays in the lives of its adherents in Victoria rather than by reference to matters such as the gullibility of those adherents or the motives of those responsible for the content of current writings and the form of current practices. As we have noted, the approach of counsel for the Commissioner substantially follows this approach to the problem. The thrust of his submission is directed to establishing that those writings and practices viewed in their entirety fall short of constituting a religion.

The word "religion" is not susceptible of the type of definition which will enable the question whether a particular system of beliefs and practices is a religion to be determined by use of the syllogism of formal logic. As Young C.J. pointed out in the Full Court of the Supreme Court, that question will ordinarily fall to be determined by reference to a number of indicia of varying importance.

Before attempting to identify what we see as the more important of those indicia, it is appropriate to consider whether it is possible to isolate any essential characteristic or characteristics without which one cannot have a religion.

In the Full Supreme Court, Kaye J. saw the essence of religion as the relationship between the individual adherent of the religion and his God. His Honour said:

"In my opinion, what distinguishes the belief or feelings with which a religion is concerned, and is fundamental to it, is the recognition of the existence of a Superior or Supernatural Being or Power with whom an individual has a personal relation and upon whom his own existence depends. The 'Superior or Supernatural Being or Power' may be referred to by the individual by any of a number of names, including Allah, God, or Jehovah; but it is immaterial by what name the deity is known or called. Indeed, the Superior Being may be without name. Furthermore, it may not be a single identity; two or more gods may constitute the foundation of a man's belief. The belief or feeling of the individual in relation to the deity is a personal one; although he may recognize and respect that others have their own god, his relationship to his own deity is characterized by the belief that his is the true and only deity."

Crockett J. had adopted a similar approach at first instance when, after referring to a number of authorities and definitions, he indicated his agreement with the statement of the majority of the United States Supreme Court in *Davis v. Beason* 133 U.S. 333 (1890), at p. 342 to the effect that "religion", as used in the First Amendment to the United States Constitution, "has reference to one's views of his relations to his Creator and to the obligations they impose of reverence of his being and character, and of obedience to his will".

In the context of a Western community, there is plainly force in the view that man's recognition of, and his relationship with, a personalized god constitutes the essence and central concern of religion. That is certainly true of the three great prophetic and monotheistic religions or groups of religions - Judaism, Christianity and Islam whose origins can be traced, directly or indirectly, to Israel and the Old Testament. One finds in Scientology

writings some acknowledgment of the existence of a Supreme Being or God. If, however, it be an essential requirement of a religion that it be centred upon recognition of the existence of a Supreme Being with whom an individual has a personal relationship and upon whom the individual's existence depends, Scientology does not satisfy it. As has been said, the central concern of Scientology is the delivery of the "thetan" or spirit, which is immortal, from the bondage of the body with little attention being paid to the identification or definition of, let alone any personal relationship with, the Supreme Being. The same can, however, be said of at least two of the immanentist religions or groups of religions which can be traced, directly or indirectly, to India and the Upanishads. Buddhism is, broadly speaking, agnostic about a god while Theravada Buddhism and Jainism, at least in its original form, actually deny the existence of a personal creator. For that matter, classical Hinduism itself was more concerned with the non-personalized Brahman than with the recognition of, or man's relation with, any one or more of the Hindu gods.

The identification by Kaye J. of both a recognition of, and a personal relationship with, a Superior or Supernatural Being or Power as constituting the essence of religion accords, no doubt, with the understanding of many, perhaps most, Australians of what lies at the heart of their own particular religion and religious beliefs. For the purposes of ordinary statutory construction in present day Australia however, we are unable to accept, as an essential element of "a religion", a characteristic which is, even arguably, not possessed by one or more of what are generally accepted as leading religions.

In *Adelaide Company of Jehovah's Witnesses Inc. v. The Commonwealth* (1943) 67 C.L.R. 116 at pp. 123-126, Latham C.J. referred to the difficulty, if not the impossibility, of framing an acceptable definition of religion for the purposes of s.116 of the Constitution and commented that it "is not for a court, upon some a priori basis, to disqualify certain beliefs as incapable of being religious in character". Notwithstanding that there may be grounds for attributing a wider meaning to the word "religion" in the context of a constitutional guarantee against the establishment of a religion than in the context of a statutory exemption from a pay-roll tax, we are of the view that the above comment of Latham C.J., with which we respectfully agree, is in point in answering the question whether Scientology is a religion for the purposes of the present case. There is no single characteristic which can

be laid down as constituting a formularized legal criterion, whether of inclusion or exclusion, of whether a particular system of ideas and practices constitutes a religion within a particular State of the Commonwealth. The most that can be done is to formulate the more important of the indicia or guidelines by reference to which that question falls to be answered. Those indicia must, in the view we take, be derived by empirical observation of accepted religions. They are liable to vary with changing social conditions and the relative importance of any particular one of them will vary from case to case. We briefly outline hereunder what we consider to be the more important of them. In so doing, we are conscious of the fact that we are, of necessity, venturing into a field which is more the domain of the student of comparative religion than that of the lawyer.

One of the more important indicia of "a religion" is that the particular collection of ideas and/or practices involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses. If that be absent, it is unlikely that one has "a religion". Another is that the ideas relate to man's nature and place in the universe and his relation to things supernatural. A third is that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance. A fourth is that, however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups. A fifth, and perhaps more controversial, indicium (cf. *Malnak v. Yogi* 592 F. 2d. 197 (1979)) is that the adherents themselves see the collection of ideas and/or practices as constituting a religion.

As has been said, no one of the above indicia is necessarily determinative of the question whether a particular collection of ideas and/or practices should be objectively characterized as "a religion". They are no more than aids in determining that question and the assistance to be derived from them will vary according to the context in which the question arises. All of those indicia are, however, satisfied by most or all leading religions. It is unlikely that a collection of ideas and/or practices would properly be characterized as a religion if it lacked all or most of them or that, if all were plainly satisfied, what was claimed to be a religion could properly be denied that description. Ultimately however, that question will fall to be resolved as a matter of judgment on the basis of what

the evidence establishes about the claimed religion. Putting to one side the case of the parody or sham, it is important that care be taken, in the exercise of that judgment, to ensure that the question is approached and determined as one of arid characterization not involving any element of assessment of the utility, the intellectual quality, or the essential "truth" or "worth" of the tenets of the claimed religion.

The view which we have expressed of the meaning of "religion" accords broadly with the newer, more expansive, reading of that term that has been developed in the United States in recent decades. The story of that development is described by Circuit Judge Adams in his concurring opinion in *Malnak v. Yogi*. From his examination of three cases in particular, *Torcaso v. Watkins* 367 U.S. 488 (1961), *United States v. Seeger* 380 U.S. 163 (1965) and *Welsh v. United States* 398 U.S. 333 (1970), his Honour concluded that the theistic formulation presumed to be applicable in the late nineteenth century cases (e.g. *Davis v. Beason*) is no longer sustainable. "Religion" is not confined to the relationship of man with his Creator, either as a matter of law or as a matter of theology. Yet its definition remains unclear.

"The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions'" (at p. 207).

Adams J. identified three useful, though not essential, indicia by which to pursue the analogy to which he had referred. He described the first and most important of these indicia as "the nature of the ideas in question", whether they reflect those ultimate concerns which embody the fundamental problems of human existence. The second indicium is the element of comprehensiveness by which a set of ideas forms an integrated belief-system as distinct from a treatment of one or a number of isolated questions. The third indicium relates to forms and ceremonies which are comparable to those adopted by accepted religions. In conclusion, his Honour said:

"Although these indicia will be helpful, they should not be thought of as a final 'test' for religion. Defining religion is a sensitive and important legal duty. Flexibility and careful consideration of each belief system are needed.

Still, it is important to have some objective guidelines in order to avoid ad hoc justice" (at p. 210).

The conclusion to which we have ultimately come is that Scientology is, for relevant purposes, a religion. With due respect to Crockett J. and the members of the Full Supreme Court who reached a contrary conclusion, it seems to us that there are elements and characteristics of Scientology in Australia, as disclosed by the evidence, which cannot be denied. They bear repetition, with particular reference to the indicia which we have suggested. The essence of Scientology is a belief in reincarnation and concern with the passage of the "thetan" or the spirit or soul of man through eight "dynamics" and the ultimate release of the "thetan" from the bondage of the body. The existence of the Supreme Being as the eighth "dynamic" has been asserted since the early writings of Hubbard (see *Science of Survival*, Book I pp. 60 and 98, Book II pp. 244 and 289). The ideas of Scientology satisfy the first two indicia: they involve belief in the supernatural and are concerned with man's place in the universe and his relation to things supernatural. Scientology in Australia also satisfies all of the other above-mentioned indicia. The adherents accept the tenets of Scientology as relevant to determining their beliefs, their moral standards and their way of life. They accept specific practices and participate in services and ceremonies which have extra-mundane significance. In Australia they are numbered in thousands, comprise an organized group and regard Scientology as a religion. It was submitted that Scientology lacked comprehensiveness particularly as regards the nature of, and man's relationship with, the Supreme Being. It has been seen, however, that that is something which Scientology shares with the great Indian religions from which some of its ideas would appear to have been derived. It was also submitted that the fact that Scientology does not insist that its adherents disavow other religious affiliations indicates that it is not a true religion. That, again, is something which could be said of a number of religions including Hinduism, some types of Buddhism and Shintoism. Again, reference was made to some unusual features of membership in the organisation and to the strong commercial emphasis in its practices. However incongruous or even offensive these features and this ~~emphasis may seem to some of those outside its membership~~ other considerations to which we have referred.

As has been said, each case must be determined on the basis of the evidence adduced. With all respect to those

who have seen the matter differently, we do not consider the present case, when approached on that basis, to be a borderline one. Regardless of whether the members of the applicant are gullible or misled or whether the practices of Scientology are harmful or objectionable, the evidence, in our view, establishes that Scientology must, for relevant purposes, be accepted as "a religion" in Victoria. That does not, of course, mean either that the practices of the applicant or its rules are beyond the control of the law of the State or that the applicant or its members are beyond its taxing powers.

It should be mentioned that the Commissioner disclaimed any reliance upon the proposition, which found favour with Brooking J. in the Full Supreme Court, that the applicant's claims to be a religious institution were based on illegal purposes and activities upon which it could not be permitted to rely to establish entitlement to the claimed exemption from pay-roll tax. The proposition was derived from certain provisions of the *Psychological Practices Act 1965 (Vic.)*. The Court was informed that the proposition had not been raised at first instance, that evidence in relation to it might well have been led if it had been raised and that, in any event, the statutory basis for it had since been removed by subsequent amendment to that Act. In the circumstances, it would seem preferable that we refrain from expressing any view in relation to it.

Special leave to appeal should be granted. The appeal should be allowed. The decision of the Commissioner should be set aside and the applicant's objection to the assessment of pay-roll tax should be allowed. The Commissioner should be ordered to pay the applicant's costs at first instance, in the Full Court of the Supreme Court of Victoria and in this Court.